

No. 15456

United States
Court of Appeals
for the Ninth Circuit

JOSEPH L. JOY, Trustee of the Estate of Miller
Scraper & Mfg. Co., Inc., bankrupt,
Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION and CONSOLI-
DATED DISTRIBUTORS, INC., a corpora-
tion, Appellees.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Northern Division

FILED

MAY - 8 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California.

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Fresno, California. [1]*

* Page numbers appearing at foot of page of original Transcript of Record.

In the District Court of the United States for the
Southern District of California

In Bankruptcy. No. 8097

In the Matter Of
MILLER SCRAPER & MFG. CO., INC.,
Bankrupt.

DEBTOR'S PETITION

To the Honorable Judge of the District Court of
the United States for the Southern District of
California:

The Petition of Miller Scraper & Mfg. Co., Inc.,
residing at corner Manning Ave. and Highway 99
between Fowler and Selma, County of Fresno, State
of California, engaged in the business of manu-
facturing farm implements,

Respectfully Represents:

1. Your petitioner has had its principal place of
business at corner of Manning Ave. and Highway
99, between Fowler and Selma, California, within
the above judicial district, for a longer portion of
the six months immediately preceding the filing of
this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to
surrender all its property for the benefit of its
creditors, except such as is exempt by law, and
desires to obtain the benefit of the Act of Congress
relating to bankruptcy.

3. The schedule hereto annexed, marked Sched-
ule A, and verified by your petitioner's oath, con-

tains a full and true statement of all its debts, and, as far as it is possible to ascertain, the names and places of residence of its creditors, and such further statement concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, that it may be adjudged by the court to be a bankrupt within the purview of said Act.

[Seal] MILLER SCRAPER & MFG. CO.,
INC.,

/s/ By CHARLES R. MILLER,
Vice-President,
Petitioner.

/s/ HAROLD M. CHILD,
Attorney for Petitioner,

United States of America,
Southern District of California,
County of Fresno—ss.

Oath for Corporation

I, Charles R. Miller, do hereby make solemn oath that I am the Vice-President of the corporation which is the Petitioning Debtor mentioned in the foregoing petition and which corporation is duly

organized under the laws of the State of California and engaged in the business of manufacturing farm implements and is not a municipal railroad, insurance nor banking corporation, and that I am duly authorized in the premises; that a copy of the vote or resolution authorizing the filing of this petition is attached hereto, made part hereof and marked Exhibit "C", and I do hereby make solemn oath that the statements contained in the above petition are true according to the best of my knowledge, information and belief.

/s/ CHARLES R. MILLER,
Officer of Corporation.

Subscribed and sworn to before me this 2nd day of August, A.D. 1954.

[Seal] /s/ ELEANOR BERGSTEDT,
Notary Public. [2]

[Endorsed]: Filed August 2, 1954.

United States District Court for the Southern
District of California

ORDERS OF ADJUDICATION AND
OF GENERAL REFERENCE

At Los Angeles, in said District, on August 4, 1954.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress

relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings herein-after mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number: 8097. Title of Proceedings: Miller Scraper & Mfg. Co., Inc. Filed: August 2, 1954. Referee: Wm. A. McGugin, Esq., Fresno, Calif.

LEON R. YANKWICH,
United States District Judge. [24]

[Endorsed]: Filed August 4, 1954.

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S BOND

At Fresno, in said district, on the 11th day of August, 1954.

The above named Miller Scraper Co., a corporation, having been duly adjudged a bankrupt on a petition filed by it on the 2nd day of August, 1954;

and Joseph L. Joy, of Fresno, in said district, having been duly appointed receiver of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for the faithful performance of his official duties in the amount fixed by the order of this court, viz., Five Hundred (\$500.00) Dollars;

It Is Ordered that the said bond be, and it hereby is, approved.

WILLIAM A. McGUGIN,
Referee in Bankruptcy.

This is to certify that this is a true and correct copy of the original thereof on file in the office of the undersigned Referee in Bankruptcy.

Dated: June 2, 1955.

WILLIAM A. McGUGIN,
Referee in Bankruptcy. [25]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
TO SHOW NATURE, EXTENT AND VA-
LIDITY OF ALLEGED LIEN

To the Hon. William A. McGugin, Referee in Bankruptcy:

The petition of Joseph L. Joy respectfully represents:

1. That he is the duly appointed, qualified and acting Receiver in Bankruptcy of the above-named bankrupt estate.

2. That he has taken into his possession assets, property and effects of said estate including the following Miller Scrapers: Serial Numbers C-357 through C-376; Serial Numbers D-0130 through D-0134; Serial Numbers A-63 through A-77; Serial Numbers B-81 and B-82.

3. That upon said property a creditor herein, Consolidated Distributors, Inc. and Bank of America National Trust & Savings Association claims to be the owner of or claims to have an interest in and claims to have certain liens, claims or securities to secure certain obligations owing to it by the bankrupt. That it is necessary that a determination be had herein of the nature, extent, amount and validity, if any, of said claim of said creditor upon the assets of the bankrupt which have been taken into the possession of your petitioner.

Wherefore, your petitioner prays that an order to show cause be issued requiring said Consolidated Distributors, Inc. and Bank of America National Trust & Savings Association [26] to be and appear before the Honorable Referee on a day fixed, then and there to show and establish the nature, amount, extent and validity of its claim against the bankrupt herein and the nature, extent, amount and validity of any lien, claim or security upon any of the assets of said bankrupt.

/s/ JOSEPH L. JOY,

Receiver. [27]

Duly Verified.

[Endorsed]: Filed August 18, 1954.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the reading and filing of the verified petition of the Trustee herein, and good cause appearing therefor; and the Court being fully advised in the premises; on motion of said Trustee,

It Is Ordered that the prayer of the petition of the Trustee for issuance of an order to show cause herein is hereby granted and Consolidated Distributors, Inc. and Bank of America National Trust & Savings Association are ordered to be and appear before the Hon. William A. McGugin, Referee in Bankruptcy, in his courtroom, 510 Security Bank Building, 1060 Fulton Street, Fresno, California, on the 16th day of September, 1954, at 11:00 o'clock a.m. thereof, then and there to show and establish the nature, amount, extent and validity of its claim against the bankrupt herein and the nature, extent, amount and validity of any lien, claim or security upon the assets of said bankrupt.

It Is Further Ordered that a certified copy of this order to show cause and a copy of the annexed petition of the Trustee herein be served upon Consolidated Distributors, Inc. and Bank of America National Trust & Savings Association, at least ten (10) days prior to the date fixed herein for showing cause.

Dated: This 24th day of August, 1954.

/s/ WILLIAM A. MCGUGIN,

Referee in Bankruptcy. [28]

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 24, 1954.

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S BOND

At Fresno, in said district, on the 4th day of October, 1954.

The above named Miller Scraper & Mfg. Co., Inc., having been duly adjudged a bankrupt on a petition filed by it on the 4th day of August, 1954; and Joseph L. Joy, of Fresno, in said district, having been duly appointed trustee of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for the faithful performance of his official duties in the amount fixed by the order of this court, viz., Twenty Thousand (\$20,000.00) Dollars;

It Is Ordered that the said bond be, and it hereby is, approved.

WILLIAM A. McGUGIN,
Referee in Bankruptcy.

This is to certify that this is a true and correct copy of the original thereof on file in the office of the undersigned Referee in Bankruptcy.

Dated: June 2, 1955.

WILLIAM L. McGUGIN,
Referee in Bankruptcy. [30]

[Title of District Court and Cause.]

ORDER DETERMINING NATURE, EXTENT
AND VALIDITY OF CLAIMS TO PER-
SONAL PROPERTY

The Order to Show Cause filed in the above matter against Consolidated Distributors, Inc., and Bank of America National Trust and Savings Association, came on regularly for hearing on the 16th day of September, 1954, at which time said order to show cause was heard in part and was thereupon continued for further hearing on October 14, 1954, at which time a further hearing was had and the matter was submitted to the Referee for decision. Joseph L. Joy, Trustee, and Eckhart A. Thompson, attorney for Trustee, appeared on behalf of the above bankrupt estate, Ray Barrett, attorney, appeared for Consolidated Distributors, Inc., and H. H. Bechtel, attorney, appeared for Bank of America NTSA. Evidence having been introduced at said hearings and the cause having been submitted for decision and good cause appearing therefor, the Referee hereby makes his findings of fact and conclusions of law as follows:

Findings of Fact

The Referee makes his finding of fact as follows: That at all times mentioned herein, the above bankrupt was engaged in the business of manufacturing scrapers and other farm equipment on premises located on the southeast corner of Manning Avenue and U. S. Highway 99 in the County

of Fresno. That said operation was conducted on a plot of ground about 4 acres in size; that on the northwest corner of said premises was located a large metal [31] building on which there was a sign on which the name Miller Scraper Company appeared in letters about three feet high, plainly visible from both Highway 99 and Manning Avenue, the entrance to said property being on Manning Avenue.

That on or about March 20, 1952, the above bankrupt entered into a written agreement with Consolidated Distributors, Inc., whereby said Consolidated Distributors, Inc., was to act as the distributor for the scrapers to be manufactured by the above bankrupt. That pursuant to said agreement and an amendment thereto, said Consolidated Distributors, Inc., rented office space in a small office building located east and slightly south of the aforesaid large metal building. That on the entrance to said office building in letters two or three inches high, was printed the name Miller Scraper Manufacturing Co. and Consolidated Distributors, Inc. That inside said office building on the door leading to the office of Consolidated Distributors, Inc., was painted the name Consolidated Distributors, Inc., in letters two or three inches high. That after March of 1952 when the above bankrupt was manufacturing scrapers, these scrapers, as soon as they were manufactured, were moved out and parked on vacant ground south of a paint shed which paint shed was south of the aforesaid office on a portion of ground located at about the middle of the said

4 acre plot of ground owned by the above bankrupt; said scrapers bore the name Miller Scraper Manufacturing Co., and the above bankrupt at all times stored other farm equipment manufactured by and belonging to the bankrupt on the vacant land adjacent to said scrapers and on each side of said scrapers.

That immediately to the west of the land on which said scrapers were stored, there was stored certain steel raw materials around which steel there was placed a fence on which fence there was a sign stating that this steel was the property of C. O. Brose. [32]

That Consolidated Distributors, Inc., purchased said scrapers from Miller Scraper Manufacturing Co., and received invoices from the above bankrupt on the first and fifteenth of each month, which invoices would indicate the number of scrapers sold during the preceding fifteen days, together with the price of each of said scrapers. Upon receipt of these invoices, Consolidated Distributors, Inc., would take the invoices to the Bank of America NTSA and would receive therefor 90% of the amount of the invoice in exchange for a trust receipt issued to the Bank of America by Consolidated Distributors, Inc. The bank account of the above bankrupt was upon issuance of the trust receipt, credited by the Bank of America with the amount of 90% of the amount of said invoices.

That as weeds would grow up about the said scrapers parked on the above bankrupt's premises, the above bankrupt's employees would take a truck

and pull the scrapers from place to place so that the weeds could be cleared off from the area on which said scrapers were stored. From time to time, when said scrapers would require repairs occasioned by rust or faulty workmanship, the above bankrupt would take such scrapers back into the shop and repair said scrapers and then return them to the ground on which they were originally stored. This repair and/or reconditioning work was done without charge to Consolidated Distributors, Inc.

That in June of 1953, Consolidated Distributors, Inc. left the premises of Miller Scraper Co., removing their office therefrom and taking the name Consolidated Distributors, Inc., off of the door to the office and leaving the scrapers in question described in the attached Exhibit A, parked on the premises of Miller Scraper Co., as before. That during the interim from June to December, 1953, Consolidated Distributors, Inc., conducted business from Hammer Field in Fresno County. That on December 23, 1953, Consolidated Distributors, Inc., and Miller Scraper Co., the above bankrupt, entered into a written agreement which purported [33] to compromise and settle and supercede all previous agreements. That said agreement provided in part that all of the scrapers which are the subject of this proceeding and which allegedly belonged to Consolidated Distributors, Inc., should be sold by the above bankrupt in the name of Miller Scraper and Manufacturing Co., Inc.; that said bankrupt should, at its own expense place all of said scrapers in condition to be sold and should

sell them in a certain prescribed manner. Said agreement also provided for a division of the profits between Consolidated Distributors, Inc., and the above bankrupt with respect to said sales. Said agreement also provided that all adjustments to be made (repairs, etc.,) with the purchaser of said scrapers should be handled by the above bankrupt.

The Referee further finds that Jess Forrest, the manager of the Bank of America NTSA, Selma Branch, made monthly inspections of the scrapers in question from 1952 to December of 1954 and saw that said scrapers were intermingled with other equipment of the above bankrupt and located on the premises of the above bankrupt.

The Referee further finds that no signs were placed on or about the scrapers indicating that Consolidated Distributors, Inc., had any interest in said scrapers and that there was no way anyone could tell by looking at the premises or the scrapers that they were not the property of the above bankrupt, and finds that a truck with the name Miller Scraper Co. painted on it was occasionally parked in the vicinity of said scrapers.

That the above bankrupt estate has creditors who came into existence prior to March 20, 1952 and has creditors who came into existence subsequent to March 20, 1952 and prior to the adjudication of the above bankrupt.

Conclusions of Law

From the above facts, the Court makes its [34] Conclusions of Law, as follows:

That there was no immediate or continued change of possession of said scrapers from the above bankrupt to Consolidated Distributors, Inc., or any other person, firm or corporation, as required by Section 3440 of the Civil Code of the State of California, and that since the Bank of America NTSA was aware at all times of the facts concerning said lack of change of possession, said Bank of America NTSA is estopped from claiming any better title than was obtained by Consolidated Distributors, Inc.; and that by reason of said lack of change of possession, said purported sale from the above bankrupt to Consolidated Distributors, Inc., was and is, void. It is therefore

Ordered, Adjudged and Decreed that neither Consolidated Distributors, Inc., or Bank of America NTSA have any right, title or interest in and to the aforesaid scrapers, which scrapers are described in the attached Exhibit A.

Dated at Fresno, California this 4th day of April, 1955.

/s/ WILLIAM A. McGUGIN,
Referee in Bankruptcy. [35]

EXHIBIT A

Rotary scrapers as follows:

- # C 357-358-359-360-361-362-363-364-365-366—3 yd.
- # D 0130-0131-0132-0133-0134—4½ yd.
- # A 63-64-65-66-67-68-69—2 yd.
- # C 367-368-369-370-371-372-373-374-375-376—3 yd.
- # B 81 and B 82—6½ yd.

A 70-71-72-73-74-75-76-77—2 yd. [36]

Affidavit of Service by Mail attached. [37]

[Endorsed]: Filed April 4, 1955.

[Title of District Court and Cause.]

PETITION OF CONSOLIDATED DISTRIBUTORS, INC. FOR REVIEW

To the Honorable William A. McGugin, Referee in Bankruptcy:

The Petition of Consolidated Distributors, Inc., a corporation, respectfully shows:

I.

Your petitioner is aggrieved by the Order herein of William A. McGugin, Referee in Bankruptcy, dated April 4, 1955, a copy of which order is annexed hereto, marked Exhibit "A" and by reference thereto made a part hereof for all purposes.

II.

That the said Order hereinabove referred to was entered by the said Referee at the conclusion of the taking of testimony and documentary evidence upon the issues of law and fact; that the facts of the matter are admitted and undisputed; and that the Findings of Fact set forth in the said Order dated April 4, 1955 are erroneous and incomplete, and that the following is a complete statement of the facts upon the record of these proceedings, to wit: [38]

That Miller Scraper Manufacturing Co., Inc., a California corporation, is successor to Kenneth L.

Miller, an individual doing business as Miller Scraper Co., both of said business entities being hereafter referred to as "Miller"; that at all times material hereto, and prior to December, 1953, Miller was engaged in the business of manufacturing dirt moving scrapers, and certain farm equipment; that Miller's manufacturing plant was situated upon the northwest corner of a certain tract of approximately four (4) acres in size situated at the southeast corner of the intersection of Manning Avenue and U. S. Highway 99 in the County of Fresno, California; that approximately 300 feet eastward of Miller Manufacturing plant, and at a point approximately 75 feet south of the south edge of Manning Avenue, there was situated an office building; that approximately equidistant between the Miller manufacturing plant and the said office building, and situated approximately 75 feet in a southerly direction, was a paint shed wherein manufactured articles were given a final coat of finishing paint; and

That Miller Scraper Manufacturing Co., Inc. is now a bankrupt; that by written agreement dated March 20, 1952, as amended by a further written agreement dated April 4, 1952, the said bankrupt corporation agreed, in writing, with petitioner herein that your petitioner, Consolidated Distributors, Inc., would purchase as sole distributor thereof all of the output and production of Miller's scrapers; and paragraph 3 of said written agreement provides that

"The Distributor agrees to purchase from the

Manufacturer all of the output or production of said Manufacturer and agrees to accept all production upon completion at the yard of the manufacturing plant of the Manufacturer;”

and,

That the said written Agreement further provides that

“The Manufacturer and Distributor agree that [39] all manufactured items are to be delivered to the Distributor F.O.B. carrier, at Selma, California, or are to be stored and/or warehoused at the yard of the manufacturer at the discretion of the Distributor, and that in either event, title thereof shall pass to the Distributor upon the occurrence thereof”,

and

That the said written agreement further provides that

“and the Distributor herein agrees to pay the Manufacturer in full for all items so delivered and appropriated by the Manufacturer on the 1st and 15th of each and every month after the date of the Manufacturer’s compliance therewith;”

and

That the above mentioned written agreement, and the amendment thereto, were recorded in Volume 3170 of Official Records of Fresno County at pages 62 and 73, respectively; and

That by the terms of said written agreement above mentioned, as amended, Miller Scraper Manufacturing Co., Inc., contracted to sell and deliver

all of their production of scrapers to Consolidated Distributors, Inc., and agreed to, and did, designate a portion of the premises as a storage area for the scrapers to be so sold and delivered under the said agreement; and

That the types, descriptions and weights of the various kinds of scrapers produced by Miller Scraper were as follows: Model A, 2 yard capacity, 4270 lbs. gross weight—Model B, 6½ yard capacity, 13,210 gross weight—Model C, 3 yard capacity, 6940 lbs. gross weight—Model D, 4½ yard capacity, 8700 lbs. gross weight—10 yard scraper, made under special order, 18,750 lbs. gross weight; that the width of the Model A scraper is 6'11", the width of the Model B is 10'6", the width of the Model C is 7'10", the width of the Model D is 7'11", and the width of the Model E is 10'10"; that the height of the Model A is 4'9", that the height of the Model B is 6'10", that the height of the Model C is 5', that the height of the Model D is 6'6", and that the height of the [40] Model E is 8'; that all of the said scraper models are bulky and difficult to move by ordinary motive equipment, excepting for the Model A which can be moved by an ordinary four-wheel drive vehicle; and

That from March, 1952 to July 1953, your petitioner occupied offices in the office building hereinabove mentioned; that your petitioner occupied equal space in said office building with Miller Scraper Company; that Miller's factory is an isolated building, identified with bankrupt's name in letters approximately 3 feet high, plainly identify-

ing the building as its manufacturing plant; that the office building was plainly identified by a sign on the exterior thereof, facing Manning Avenue, whereon the names of Miller Scraper Manufacturing Co., Inc. and Consolidated Distributors, Inc. were displayed with equal prominence, plainly identifying the said building as housing the offices of the respective companies; that within the said building, and opening out of a common entrance way, the offices of the respective companies were identified by distinctive lettering on their respective office doors; that at all times the two corporations were separately conducted business enterprises, with separate mail box addresses, separate office personnel, separate officers and directors, separate office signs, separate and distinctive letterheads, separate telephone numbers, and distinctly separate business premises; that petitioner paid Miller cash rentals for the separate offices so occupied by your petitioner; and

That beginning on or about April 1, 1952, petitioner began accepting deliveries of the scraper products of Miller Scraper Company; that, as each scraper was pulled out of the paint shed, where it had been painted as the last step in its manufacture, Miller personnel unhooked from it upon a storage lot of approximately one acre in size situated at the extreme eastern side of the premises and near the extreme southern edge of the premises; [41] that as each scraper came out of the paint shed it was pulled therefrom by a tractor owned and operated by Miller and parked on the

parking and storage area in one or more rows; that as the scrapers were parked in the said storage area each scraper was immediately inspected by Consolidated employees, who either accepted or rejected it depending upon whether any mechanical defects were discovered, and if any scraper was rejected the Miller employees immediately hooked onto it and pulled it back into the manufacturing plant where the defect was corrected; that, if the scraper was accepted by Consolidated employees, a Consolidated employee immediately enumerated and listed it upon a trust receipt, in statutory form; that invoices, in the nature of bills of sale, were received by your petitioner from Miller on or about the 1st and 15th day of each month, upon which were listed and itemized the scrapers produced and delivered by Miller during the preceding fifteen day period; that, as soon as the said invoices were received, they were attached to the corresponding trust receipts by your petitioner, and were taken by your petitioner to the Bank of America, Selma Branch; that immediately upon delivery of the said trust receipts to the Bank, the Miller Scraper Company account at the said Bank was credited with a sum equal to 90% of the invoice price of each scraper listed upon the said trust receipts; that at the present time the said Bank of America has paid the said bankrupt for scrapers described in the trust receipts, and remaining in the hands of the bankrupt estate, a total of Thirty Nine Thousand Four Hundred Ninety Six and 00/100 Dollars (\$39,496.00); that Miller

Scraper Co. received the entire sum of Thirty Nine Thousand Four Hundred Ninety Six and 00/100 Dollars (\$39,496.00), in cash, and received the entire use and benefit thereof; and

That, with further reference to the scrapers parked in the Consolidated storage area, Miller Scraper Company personnel [42] exercised no dominion or control over the said scrapers from the time the scrapers were individually inspected and accepted by your petitioner; that, upon a very few occasions, Miller was called upon to inflate tires, remove rust, and perform other minor services of a similar nature under its warranty of quality and workmanship; that Miller's name appeared upon said scrapers only as a manufacturer's trade mark thereon; that the storage area was leveled and flattened to provide a distinctive area for the storage of said scrapers; that it was the duty of Miller Scraper Company to keep weeds down within the storage area, and at infrequent intervals Miller personnel, operating a tractor, would move the scrapers about within the storage area so that weeds could be scraped down and eliminated; that your petitioner contracted for the sale of all of said scrapers through retail dealers, none of whom had any contractual relationship with Miller; that as scrapers were sold and delivered at retail, or moved out of the storage area for demonstration purposes, the scrapers were moved by Consolidated personnel or by special equipment for hauling and transporting the said scrapers hired and paid for by Consolidated Distributors, Inc.; that the neces-

sary permits from county and state authorities to move the heavy scrapers on or across county and state highways were in every case obtained by petitioner and not by Miller; that the said scrapers were insured by your petitioner against loss and hazards on the parking area and in transit shipment by your petitioner, and not by Miller Scraper Company; and

That a four-wheel drive jeep, bearing the name of Consolidated Distributors, Inc. in letters six inches high prominently displayed on each side of said jeep, was used for the purpose of pulling the smallest scraper from the loose sandy soil of the parking area, and for demonstrating the utility of the small scraper, and the said jeep was always parked in or near the [43] said scrapers in the storage area; that a pickup truck with the name Miller Scraper Company painted on its side was owned by Miller but was not identified in any way with the scrapers in the storage area; and

That in June of 1953 your petitioner moved out of its offices, but at all times between June and December maintained personnel there whose duties included inspection and receipt of scrapers; that all scrapers produced by Miller for its own account, after December, 1953 were parked upon a triangular piece of ground in front of its factory bounded by Manning Avenue and the railroad right-of-way, which was an area distinct from the parking area of Consolidated Distributors, Inc.; and

That Jess Forrest, Manager of the Bank of

America, Selma Branch, made monthly inspection of the scrapers parked on the storage lot from March, 1952 to September, 1954, and checked the serial numbers of said scrapers against the serial numbers appearing on the trust receipts, finding no discrepancies therein; and the said Jess Forrest found that there was no property other than property belonging to Consolidated Distributors, Inc. parked within the said storage area at any time during the said inspections;

III.

The Referee's Conclusions of Law are erroneous and should read as follows:

1. That the machinery and equipment, to wit, the scrapers involved in the within proceedings, were articles of such size, weight and dimension, and so numerous, that they were not readily transferable by manual delivery; and that as a matter of law the actual physical delivery of the said scrapers to Consolidated Distributors, Inc., and the storage by that company of the said scrapers in the particular storage area set apart exclusively for their storage, constitutes sufficient delivery and immediate and continued change of possession of the said scrapers from the [44] above bankrupt to Consolidated Distributors, Inc. to comply with the law applicable under the circumstances.

2. That in the instant case Consolidated Distributors, Inc., and the Bank of America, N. T. & S. A., complied with all of the applicable requirements of California law pertaining to transactions in-

volved in trust receipts method of mercantile financing.

3. That the bankrupt, Miller Scraper Co., Inc., did in fact receive the sum of Thirty Nine Thousand Four Hundred Ninety Six and 00/100 Dollars (\$39,496.00) from Consolidated Distributors, Inc., which said sum was advanced and loaned by the Bank of America, N. T. & S. A. to Consolidated Distributors, Inc. in accordance with the agreement between the parties providing for the instant method of trust receipts financing.

4. That Consolidated Distributors, Inc. actually paid to the bankrupt the sum of Thirty Nine Thousand Four Hundred Ninety Six and 00/100 Dollars (\$39,496.00) as purchase price of the scrapers in inventory and unsold on the date of adjudication in bankruptcy of Miller Scraper Company, and therefore acquired valid title to the said scrapers; that your petitioner was therefore entitled by right to create, and did create, in the Bank of America, N. T. & S. A. a security interest in and to the said scrapers pursuant to the written agreement providing for the trust receipts financing method; and that, therefore, as against all parties in interest in these proceedings, including, among others, the creditors of the bankrupt and the trustee of Miller Scraper Company, the security interest of the Bank of America, N. T. & S. A. in and to the said scrapers is a valid preexisting lien as security for the repayment of the aforesaid sum of Thirty Nine Thousand Four Hundred Ninety Six and 00/100 Dollars (\$39,496.00).

5. That this court should enter its order in these premises adjudging that Miller Scraper & Manufacturing Co., Inc., bankrupt [45] herein, has no right, title, estate, lien or interest in and to the aforesaid scrapers, as the same are identified and enumerated in the Referee's Order dated April 4, 1955 on file in these proceedings.

Wherefore, petitioner prays that proceedings be had upon this petition according to law and the practice of this court; that this court make and enter its order adjudging that Miller Scraper & Manufacturing Co., Inc., bankrupt herein, has no right, title, estate, lien or interest in and to any or all of the certain scrapers identified and enumerated in the Referee's Order dated April 4, 1955 on file herein; for its costs, and for such other and further relief as may be just and proper.

Respectfully submitted,

CONSOLIDATED DISTRIBUTORS,
INC.,

/s/ By CHARLES RAY BARRETT,
Petitioner.

DAVIS, GUERARD & BARRETT,
/s/ By CHARLES RAY BARRETT,
Attorneys for Petitioner. [46]

Duly Verified. [47]

[Exhibit A. Order is set out at pages 11-17 of this printed record.]

Acknowledgment of Service attached.

[Endorsed]: Filed May 5, 1955.

[Title of District Court and Cause.]

NOTICE OF FILING CERTIFICATE
ON REVIEW

Notice Is Hereby Given that the Certificate and Report of Referee William A. McGugin on the petitions of Bank of America National Trust & Savings Association and Consolidated Distributors, Inc. to review the Order of the Referee Determining the Nature, Extent and Validity of Interest in and Title to Personal Property, was filed with the Clerk of the above entitled Court on the 2nd day of June, 1955 by mail, and will be set for hearing.

Dated: June 2, 1955.

/s/ WILLIAM A. MCGUGIN,
Referee in Bankruptcy. [54]

[Endorsed]: Filed June 3, 1955.

[Title of District Court and Cause.]

CERTIFICATE AND REPORT OF REFEREE
ON PETITIONS OF THE BANK OF
AMERICA NATIONAL TRUST & SAV-
INGS ASSOCIATION AND CONSOL-
IDATED DISTRIBUTORS, INC. TO RE-
VIEW REFEREE'S ORDER TO DETER-
MINE NATURE, EXTENT AND VALID-
ITY OF INTEREST IN AND TITLE TO
PERSONAL PROPERTY

To the Honorable Judges of the District Court of
the United States, Southern District of Cali-
fornia:

I, William A. McGugin, Referee in Bankruptcy,
in charge of the above entitled proceedings, in re-
sponse to the petitions of the Bank of America Na-
tional Trust & Savings Association and Consoli-
dated Distributors, Inc. to review the Referee's
Order that they had no right, title or interest in,
or claim to, or security in or lien on, certain per-
sonal property consisting of forty-two Rotary
Scrapers, made and filed by me on April 4, 1955,
do hereby certify that in the course of the pro-
ceedings in said cause before me that:

1. On August 2, 1954 the above named bankrupt
filed a voluntary petition in bankruptcy and was
adjudicated a bankrupt on that date and the matter
was referred to [55] William A. McGugin, Referee
in Bankruptcy, by general reference.

2. That on August 11, 1954, Joseph L. Joy duly qualified as receiver in this matter and upon said date he came into possession of all of the assets and property of the bankrupt, including the rotary scrapers involved in this review. That on October 4, 1954, Joseph L. Joy duly qualified as the trustee in this matter.

3. That the rotary scrapers were in the possession of the bankrupt at the time of the filing of the petition in bankruptcy.

4. That on August 20, 1954, the Bank of America and Consolidated Distributors, Inc., through their attorneys and the Receiver in Bankruptcy stipulated that said Bank and said Consolidated Distributors then and there show the nature, extent and validity of their alleged interests in said rotary scrapers; that a hearing was then held thereupon and was continued for further hearing to October 14, 1954, at which time was further heard and continued for further hearing to November 1, 1954, at which time the matter was submitted upon argument of counsel.

The question presented by said petitioners for the Court to determine is as follows:

1. Was there sufficient delivery and transfer of possession of said scrapers to said respondents to satisfy the requirements of Section 3440 of the Civil Code of the State of California?

Upon consideration of the evidence I made the findings of fact and conclusions of law forwarded herewith.

I hereby certify to the District Court the following documents: [56]

1. Voluntary petition in bankruptcy filed August 2, 1954 (by reference to Clerk's Original on file in the Clerk's Office of the United States District Court for this District).

2. Order of Adjudication in Bankruptcy (by reference to Clerk's Original on file in the Clerk's Office of the United States District Court for this District).

3. Certified copy of Order Approving Trustee's Bond, and of Order Approving Receiver's Bond.

4. Petition for Order to Show Cause to Show Nature, Extent and Validity of Alleged Lien.

5. Order to Show Cause issued August 24, 1954.

6. Order Determining Nature, Extent and Validity of Claims to Personal Property.

7. Petition for Extension of Time within Which to File Petition for Review.

8. Order Extending Time for Filing Petition for Review to April 25, 1955.

9. Order Extending Time for Filing Petition for Review to May 5, 1955.

10. Petition for Review of Bank of America.

11. Petition for Review of Consolidated Distributors, Inc.

12. This Certificate.

13. Transcript of Testimony.

14. Exhibits A to H of Bank of America.
15. Exhibits A to F of Consolidated Distributors.
16. Exhibits 1 to 9 of Trustee.

Respectfully submitted,

/s/ WILLIAM A. McGUGIN,
Referee in Bankruptcy. [57]

Affidavit of Service by Mail attached. [58]

[Endorsed]: Filed June 3, 1955.

United States District Court, Southern District
of California, Northern Division

No. 8097 In Bankruptcy

In the Matter of
MILLER SCRAPER & MFG. CO., INC.,
Bankrupt.

ORDER ON PETITIONS FOR REVIEW OF REFEREE'S ORDER

The petitions for review of the order of the Referee dated April 4, 1955, denying the right, title and interest of the Bank of America and Consolidated Distributors, Inc., to certain property described in said petitions, were filed on April 25, 1955 and May 5, 1955.

Counsel for Consolidated Distributors are Davis, Guerard and Barrett, Charles Ray Barrett appearing, and H. H. Bechtel appeared for the Bank of America. The trustee was represented by Eckhart A. Thompson and James M. Conners.

The facts are uncontradicted, and in the main are set forth in the Referee's findings of fact.

The bankrupt was engaged in the business of manufacturing scrapers and other farm equipment on premises located on four acres of ground on U. S. Highway 99, south of the City of Fresno. On the plot of ground was located a large metal building with the Miller Scraper sign in letters about three feet high. [59]

By written agreement dated March 20, 1952, the predecessor of the bankrupt contracted with petitioner Consolidated Distributors, Inc., then designated as Industrial Equipment Company, Inc., whereby said last named corporation was to act as distributors of the scrapers manufactured by the bankrupt. This agreement was supplemented and amended by an agreement dated April 4, 1952. Pursuant to this agreement as amended, Consolidated rented office space in a small office building located near the building occupied by the bankrupt and on the same plot of ground. At the entrance to this office building a sign was placed which carried the name of Consolidated Distributors and of Miller Scraper Company, in letters two or three inches high. Inside the building another sign was placed on the door leading to the office of Consolidated which indicated that it was the office of Consolidated. Pursuant to the agreement as amended, about an acre of ground on the same plot was devoted to the storage of scrapers manufactured by the bankrupt and delivered to Consolidated Distributors. Equipment belonging to the bankrupt

was stored or kept adjacent to the storage area. Under the agreement as amended, Consolidated, on the first and fifteenth days of each month, was required to pay for all scrapers delivered to the storage lot and accepted by Consolidated during the preceding fifteen days. Invoices to such scrapers were directed to the Bank of America and delivered to Consolidated Distributors. Consolidated then attached to such invoices trust receipts which were delivered to the Bank of America. The Bank then credited the account of the bankrupt with an amount equal to 90% of the invoice price, and Consolidated Distributors paid the remaining ten per cent to the bankrupt. [60]

The scrapers in question were located on the plot of ground above described at the time of the filing of the petition in bankruptcy. All of the scrapers involved in this proceeding were placed under trust receipt financing, in the manner above indicated, prior to March 31, 1953. In June of 1953, Consolidated Distributors moved its offices from the premises, and removed its name from the office there. The scrapers then on the lot were left there and, thereafter, Consolidated conducted its business from offices at Hammer Field in Fresno County. In December, 1953, the parties entered into a written agreement which superceded all previous agreements and provided that all of the scrapers in question were to be sold by the bankrupt in the manner therein prescribed, and that the profits were to be divided as in said agreement provided.

Representatives of the Bank of America made

monthly inspections of the scrapers located on the plot of ground.

The Referee issued an order directed to the Consolidated Distributors, Inc., and to the Bank of America, to establish the nature and extent and validity of any lien, claim or security upon the assets of the bankrupt. A hearing was held and the order of the Referee was made. As a conclusion of law from the findings of fact, the Referee found:

“That there was no immediate or continued change of possession of said scrapers from the above bankrupt to Consolidated Distributors, Inc., or any other person, firm or corporation, as required by Section 3440 of the Civil Code of the State of California, and that since the Bank of America NTSA was aware at all times of the facts concerning said lack of change of possession, said Bank of America NTSA is estopped from claiming any better title than was [61] obtained by Consolidated Distributors, Inc., and that by reason of said lack of change of possession, said purported sale from the above bankrupt to Consolidated Distributors, Inc., was and is, void.”

Two questions are presented by this review. The first question relates to the extent and validity of any interest or title of Consolidated in the scrapers. The Referee concluded that Consolidated had no right, title or interest because there had been no immediate or continued change of possession of the scrapers as required by Section 3440 of the Civil Code of the State of California. The Court has reviewed the findings made by the Referee and the

transcripts of the testimony taken by the Referee. The Court is in no position to state that the findings of fact and the conclusions of law of the Referee in this respect are erroneous. Reasonable minds might reasonably disagree on the conclusions to be drawn from all of the evidence before the Referee. This Court will therefore not disturb the findings of fact or the conclusions of the Referee insofar as they relate to any interest, right or title of Consolidated in and to the scrapers, and his findings and conclusions in that respect are affirmed.

The second question presented by the review involves the right, title and interest of the petitioner, Bank of America, under the trust receipts which cover all of the scrapers. As above indicated, all the invoices prepared by the bankrupt were made directly to the Bank of America. Trust receipts in proper form were attached to the invoices. The Bank promptly complied with all of the requirements of the Trust Receipts Act. The title and interest thus acquired by the Bank was not a derivative interest or title. Under the provisions of Section 3014 of the Civil Code of [62] California, the security interest of the entruster may be derived from the trustee or from any other person and by pledge or by transfer of title or otherwise. Compliance with the provisions of Section 3440 of the Civil Code of California was not required. Section 3016.16 states that "Notwithstanding the provisions of any general or special law, the provisions of this chapter shall control except as to trust receipts and pledge transactions entered into before this

chapter becomes effective." The Trust Receipts Act became effective in 1935. Shortly after the enactment of the Trust Receipts Act, Judge McCormick of this District, in an opinion in *In re Boswell*, 20 Fed. Supp. 748, said:

"Some chief differences [between the Trust Receipts Act and other security transactions] that readily enter the mind when the term is used include the absence of actual or immediate delivery or change of possession, the removal of notice, recordation or verification requirements, and the retention of title in the vendor."

In *Chichester v. Commercial Credit Corporation*, 37 C A 2d 439, the Court considered the Trust Receipts Act with other statutes, such as Section 3440, and said,

"This rule of construction has for its purpose the object of unifying the laws of the several states on the same subject and is therefore not to be treated as a codification of local laws of commercial customs. The fundamental purpose of the act in question should be considered in the light of the general commercial law of the country as a whole. The principle of the uniform act should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it." (Citing: *Commercial National Bank v. Canal-Louisiana Bank and Trust Company*, 239 U. S. 520.) [63]

While the facts in the *Chichester* case are not entirely the same as the facts in the instant case,

the principles of law therein enunciated are extremely persuasive.

It is the view of the Court that the conclusion and order of the Referee that the Bank of America has no right, title or interest in and to the scrapers, or is estopped from claiming any better title than was obtained by Consolidated, are erroneous, and must be and are reversed.

This cause is remanded to the Referee with instructions to pursue such proceedings as may be appropriate in a manner consistent herewith.

The Clerk of this Court is directed to forthwith transmit copies of this order to all counsel and the Referee.

January 12, 1956.

/s/ GILBERT H. JERTBERG,
Judge, United States District Court.

[Endorsed]: Filed January 12, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Joseph L. Joy, Trustee of the above-named bankrupt estate, Petitioner in the proceeding and cause herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the Honorable Gilbert H. Jertberg, Judge of the above-entitled United States District Court, made and entered on the 12th day of January, 1956, and to that portion of said Order reversing the Order of the Referee

in Bankruptcy made and entered on the 4th day of April, 1955.

Dated: This 6th day of February, 1956.

ECKHART A. THOMPSON,
JAMES M. CONNERS,
/s/ By JAMES M. CONNERS,
Attorneys for Appellant. [65]

[Endorsed]: Filed February 7, 1956.

[Title of District Court and Cause.]

STATEMENT OF POINTS

To the above-entitled Court and to John A. Childress, Clerk of said Court; and to Bank of America National Trust and Savings Association, a National Banking Association, and to H. H. Bechtel; and to Consolidated Distributors, Inc., a corporation, and to Davis, Guerard & Barrett, its attorneys: [66]

* * * * *

Statement of Points

The points upon which Appellant intends to rely on the appeal are:

(1) The District Court erred in failing to affirm Referee's Finding of Fact No. 4, relating to the purchase of scrapers by Consolidated Distributors, Inc. from the bankrupt and execution of Trust Receipts thereon, and Finding of Fact No. 7 relating to inspections of said scrapers by the Bank of America.

(2) The District Court erred in overruling the Conclusion of Law of the Referee that the Bank of America is estopped from claiming any better title than that obtained by Consolidated Distributors, Inc. [67]

(3) The District Court erred in its Finding and Conclusion that the title and interest of the Bank of America to said scrapers was not a derivative title or interest.

(4) The District Court erred in its conclusion and Order that the title and interest of the Bank of America is valid as against Appellant Trustee and the creditors of the bankrupt estate.

Dated: This .. day of July, 1956.

/s/ ECKHART A. THOMPSON,

/s/ JAMES M. CONNERS,

Attorneys for Appellant. [68]

Affidavit of Service by Mail attached. [69]

[Endorsed]: Filed July 16, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby Certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 69, inclusive, containing the original:

Debtor's Petition;

Order of Adjudication and of General Reference;

Order Approving Trustee's Bond dated August 11, 1954;

Petition for Order to Show Cause to Show Nature, Extent and Validity of Alleged Lien;

Order to Show Cause;

Order Approving Trustee's Bond dated October 4, 1954;

Order Determining Nature, Extent and Validity of Claims to Personal Property;

Petition of Consolidated Distributors, Inc., for Review;

Notice of Filing Certification on Review;

Certificate and Report of Referee on Petitions, etc., to Review Referee's Order to Determine Nature, Extent and Validity of Interest in and Title to Personal Property;

Order on Petitions for Review of Referee's Order;

Notice of Appeal;

Designation of Contents of Record on Appeal and Statement of Points;

B. Two volumes of Reporter's Official Transcript of Proceedings had on October 14, 1954;

C. Exhibits A and B of Claimant Consolidated Distributors, Inc.;

Exhibit A of Bank of America;

Exhibit 9 of Trustee.

I further certify that my fee for preparing the foregoing record amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 27th day of February, 1957.

[Seal] JOHN A. CHILDRESS,
 Clerk,
 /s/ By CHARLES E. JONES,
 Deputy.

In the United States District Court, Northern
District of California, Southern Division

In Bankruptcy No. 8097

In the Matter of
MILLER SCRAPER & MFG. CO.,
Bankrupt.

TRANSCRIPT OF PROCEEDINGS
Fresno, California
August 20, 1954

Before Hon. William A. McGugin, Referee in
Bankruptcy.

Hearing of an Order to Show Cause why Bank of America should not appear and show the nature and extent and validity of any interest or lien that it may have in or to any of the property of the bankrupt in the above matter.

Mr. H. H. Bechtel of San Francisco, California was present, representing the Bank of America, and Mr. Joseph L. Joy of Fresno, California, representing the Trustee of Miller Scrapper & Mfg. Co.

The above-entitled matter came on for hearing

on August 20, 1954, at the hour of 10:00 o'clock a.m. before William A. McGugin, Referee in Bankruptcy.

Whereupon, the following proceedings were had and testimony taken, to wit:

Mr. Joy: If the Court please, it might be stated that there has been no service on Consolidated Distributors. Can it be stipulated that any rights they may have in the matter will be reserved to them?

The Court: The rights of Consolidated Distributors will be automatically reserved to them anyway.

Mr. Bechtel: The Bank of America would also like to reserve the right to file an answer to the petition if necessary.

The Court: No doubt these matters are related. Consolidated Distributors have claimed certain interests in the scrapers involved and the Bank of America has financed certain scrapers on trust receipts. If no service has been made on Consolidated Distributors, the hearing may have to be continued until both parties are before the Court. The Court will hear whatever evidence both parties present to it at that time.

Mr. Bechtel: All right, your Honor.

Mr. Bechtel: I will call Mr. G. E. Minear of the Bank of America. [1]*

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

G. E. MINEAR

Called as a witness on behalf of Bank of America, being first duly sworn, testified as follows:

Mr. Bechtel: Mr. Minear, what is your full name?

Mr. Minear: G. E. Minear.

Q. By whom are you employed?

A. Bank of America.

Q. In what capacity?

A. Assistant cashier.

Q. As such, are you familiar with the financial transactions of the bank with the Miller Scraper Co.?

A. Yes.

Q. Is Miller Scraper Co. indebted to the Bank of America?

A. No.

Q. You heard the Petition and Order directed against the Consolidated Distributors, Inc. Have you had any financial transactions with that corporation?

A. Yes.

Q. What is their nature?

A. Trust receipt financing.

Q. I will show you a document entitled Trust Receipt, dated January 5, 1953, are you familiar with that document?

A. Yes.

Q. And by whom is that document held?

A. By the Bank of America, Selma branch.

Q. And by virtue of that document, did the bank finance the purchase of the property therein described?

A. Yes. [2]

Q. How was that transaction handled?

A. The bank is billed for these items from the Miller Scraper Co. Miller is paid direct by the bank

(Testimony of G. E. Minear.)

and the items are in turn placed on trust receipt flooring.

Q. Could you tell from that document how much the bank advanced? A. \$18,980.00.

Q. Has any part of the obligation been repaid?

A. Part of it.

Q. Is that indicated on the trust receipt?

A. Each item is stamped by date—others individually as to when they were paid.

Q. And that stamp indicates that the item opposite the stamped number has been released from the trust receipt? A. That is right.

Mr. Bechtel: I would like to offer these documents in evidence and ask that they be withdrawn later and photostatic copies substituted.

The Court: They can be withdrawn and photostatic copies substituted. You can arrange with our office to have photostatic copies made. We will keep the documents until they have been photostated.

Mr. Bechtel: May I suggest this, your Honor? To save a bit of expense, we have had photostats made of the face of the trust receipts.

The Court: None of the reverse side?

Mr. Bechtel: I believe that the trustee will agree that the [3] reverse side is the same on all of them.

The Court: This original document will be received in evidence as Exhibit A of the Bank of America.

[See pages 187-198]

Mr. Bechtel: I think, your Honor, it is going to be necessary to have them all photostated. We withdraw our request.

(Testimony of G. E. Minear.)

Mr. Bechtel: Mr. Joy, will you stipulate as well—I did not question the witness as to the document that is attached to the trust receipt which is offered in evidence, which is an invoice from the Miller Scraper Co. That it may be termed part of the exhibit?

Mr. Joy: I will so stipulate, yes.

The Court: It is so received.

Mr. Bechtel: Mr. Minear, I will show you likewise a document with the title Trust Receipt Flooring, dated March 31, 1953 and will ask you if that is likewise from the records of the Selma branch of the Bank of America? A. It is. Yes.

Q. And it sets forth the financial interest at the time of the Selma bank? A. Yes.

Q. Could you tell the Court how much was advanced to the Consolidated Distributors on account of this trust receipt? A. \$11,365.00.

Q. Does this trust receipt likewise indicate what payments were made thereon and property released therefrom? A. It does.

Q. I would like to offer this in evidence as Exhibit B.

The Court: It will be received in evidence as Exhibit B of the Bank of America. [4]

Mr. Bechtel: Trust receipt No. 29RF1837. That also includes the attached invoice.

The Court: It is so received.

Mr. Bechtel: Do you mind giving me the number on Exhibit A?

(Testimony of G. E. Minear.)

The Court: 5RF1740, with 76 in parentheses. That is true of each of the two exhibits.

Mr. Bechtel: I will show you another document likewise entitled Trust Receipt Flooring, dated March 2, 1953 bearing No. 1RF1798. I will ask if this is likewise indicative of financing under trust receipt of the property therein described?

Mr. Minear: It is.

Q. I asked previously as to the amount advanced. Is that the figure appearing in the lower part of the document? A. Yes.

Q. And it likewise indicates the property which has been released from the receipt?

A. Yes, it does.

Q. Attached to the trust receipt and to the previous trust receipts offered in evidence there is what appears to be a statement or invoice. These documents attached to those receipts and to this one, are they part of the same transaction?

A. Yes.

Mr. Bechtel: I will offer that in evidence.

The Court: It will be received in evidence as Exhibit C of the Bank of America.

Mr. Bechtel: I will show you a similar document dated February [5] 2, 1953 bearing No. 2RF1762. I will ask you whether the questions asked relative to the previous similar documents are likewise true of this document?

A. Yes, they are.

Q. Insofar as the amount advanced and the property released? A. Yes.

(Testimony of G. E. Minear.)

Q. That is also true of the documents attached?

A. Yes.

Mr. Bechtel: I would like to offer these documents in evidence.

The Court: They will be received as Bank of America's Exhibit D.

Mr. Bechtel: I will show you a final document of similar nature and which bears the No. 20RF1750 and will ask you whether your answer to questions similarly asked you would receive the same answer?

Mr. Minear: Yes. None of these have been paid, however.

Q. Do your records indicate the present balance owing to the Bank of America on these trust receipts? A. Yes.

Q. What is the amount? A. \$36,922.00.

Q. Even?

A. Even. There should be \$26,000.00 outstanding.

Q. Is there interest due on these as well?

A. Yes. The documents provide for interest at the rate of four and one-half percent per annum so that interest would be based, I believe, from the date of the various trust receipts on the various balances.

Mr. Bechtel: I will offer trust receipt No. 20RF1750, together with invoice attached, as evidence. [6]

The Court: These two documents will be received in evidence as Exhibit E of the Bank of America.

Mr. Bechtel: Mr. Minear, I will show you a document entitled "Statement of Trust Receipt Fi-

(Testimony of G. E. Minear.)

financing" and bearing number 106977 and ask you if this is the document which bears the filing stamp of the Secretary of State which was filed in connection with the financing you have previously testified to?

Mr. Minear: Yes.

Q. This document shows that it was filed with the Secretary of State June 30, 1952. Could you testify to whether or not there was financing of this nature prior to the date of the various trust receipts that were offered in evidence?

A. No, I could not testify as to that.

Mr. Bechtel: I wish to offer this document entitled "Statement of Trust Receipt Financing", No. 106977.

The Court: This document will be received in evidence as Exhibit F of the Bank of America.

Mr. Bechtel: I will show you a similar document bearing No. 118013 and ask you if that statement was filed with the Secretary of State in connection with this financing as well? A. Yes.

Q. I would like to offer this document No. 118013 in evidence.

The Court: It will be received in evidence as Exhibit G of Bank of America.

Mr. Bechtel: I will show you a third document [7] entitled "Affidavit Concerning Statement of Trust Receipt Financing, with the number 128304, was that likewise filed in connection with financing heretofore testified to? A. Yes.

Mr. Bechtel: I would also like to offer this document in evidence.

(Testimony of G. E. Minear.)

The Court: It will be received as Exhibit H of Bank of America.

Mr. Bechtel: May we also request that these three documents be photostated and the originals released to us.

The Court: You may arrange for substitution of photostatic copies of any exhibit you have introduced. You may do so with my clerk. She will send them out and have them photostated and make the substitution and return the originals to you. The person making the request must pay the cost of photostating.

Mr. Bechtel: I understand that included in the documents which have been introduced in evidence is the description of a scraper which has been sold but on which delivery has not been made?

Mr. Minear: Yes. That is on receipt No. 1837, scraper No. D-0131. I think the date stamp is on the outside of that, dated August 8 or 9th—August 9th.

Q. So it was released from the trust receipt by the bank? A. Yes.

Q. Is the scraper still on the premises?

A. Right.

Q. Do you know to whom it was sold?

A. No, I don't know.

Q. It was sold to some third party not involved in these proceedings? [8]

A. Right. What the bank received was just the amount indicated on the trust receipt.

(Testimony of G. E. Minear.)

Mr. Joy: Have you made any inspection of the Miller Scraper premises?

Mr. Minear: Not personally. I have not gone by and checked it over. I have never been on the premises itself.

Q. You have not made any inspection to determine whether the scrapers of these particular serial numbers on the trust receipts were on the property?

A. I did not personally. They were made once or twice each month by the bank. The manager of the Selma branch informed me yesterday that he had inspected them.

Q. Were there any other documents executed by Consolidated Distributors or Bank of America or Miller Scraper in connection with these transactions?

A. No.

Q. No others in your file?

A. No.

Mr. Bechtel: Was there, in addition to the documents, a promissory note taken?

A. No. Just the documents in evidence.

The Court: Does your record indicate when the Bank of America received scraper No. D-1031 that has been sold?

Mr. Minear: Just the date stamped on the trust receipt—approximately August 9th.

Q. The amounts indicated on the trust receipts and the invoice attached thereto—how were they paid?

A. They were paid to Miller Scraper by the bank direct. [9]

Mr. Bechtel: I have no further questions.

CHARLES R. MILLER

Called as a witness by Mr. Joseph L. Joy, on behalf of the Trustee of Miller Scraper and Mfg. Co., being first duly sworn, testified as follows:

Mr. Joy: Your name is Ray Miller?

Mr. Miller: Charles R. Miller.

Q. Will you tell the Court your connection with Miller Scraper Co.?

A. I was a brother of the owner who was Kenneth L. Miller and my capacity was office manager and I took care of various office duties that came up.

Q. Are you familiar with the Miller Scraper premises down there? A. Yes.

Q. We have been discussing certain rotary scrapers that are involved in certain trust receipts with the Bank of America and Consolidated Distributors. Are you familiar with these pieces of equipment? A. Yes, I am.

Q. Will you tell us where these pieces of equipment are located on the Miller premises?

Mr. Bechtel: Please, for the record, I would like to enter an objection to any testimony regarding the location of the scrapers at this time. My purpose, I believe that under trust receipt financing the question of changing of possession is involved and I would like to preserve my rights by entering an objection.

Objection overruled. [10]

Mr. Joy: Now, will you tell us where these scrapers are located on the premises of Miller Scraper Co?

(Testimony of Charles R. Miller.)

Mr. Miller: We have approximately four acres there. The buildings, I would say, take up possibly one acre of the property—the rest is just open ground. They are located on the back portion of our property. They are grouped together, kept together back there.

Q. Is the property fenced? A. No.

Q. Unfenced? A. Unfenced.

Q. Does the Miller Scraper Co. store any property on the four acre plot which is not covered with buildings?

A. We made three different types of equipment that were involved with Consolidated.

Q. What other types of equipment do you make?

A. Reversible disc plows and a forage wagon.

Q. Where was that equipment stored with relation to the scrapers?

A. Some of it was located near where the scrapers were stored. Others were located closer to the buildings, over next to the office.

Q. Do you also make Miller orchard heaters?

A. We discontinued them about three years ago.

Q. Are any of those stored down there on the premises? A. Yes. There are two.

Q. Where, with reference to the scrapers, are these orchard stoves or heaters stored? [11]

A. They were stored clear to the far end of the property, down in what we call our junk pile. They are no longer usable. The motors have been pulled out.

Q. Looking from the highway—first there are

(Testimony of Charles R. Miller.)

the buildings near Manning Avenue, then behind the building toward the rear, there are located these rotary scrapers? A. Yes.

Q. Behind that, there are the orchard heaters?

A. Yes, and other obsolete pieces of equipment.

Q. Are there any signs or identification placed on these rotary scrapers to indicate to whom they belong? A. No, there is not.

Q. Are these groups of scrapers close together?

A. Actually, the main part of them are in one line—then we have two or three others on the other side of the building that for some reason or other we have made improvements or repaired them. They have been sitting there for a matter of months and we have had to make minor repairs.

Mr. Bechtel: May the record show that my objection will go to all this testimony?

Mr. Joy: And most of these scrapers are in one long line to the rear of the building—then the others are where?

Mr. Miller: Next to the lot—more in front of the buildings.

Q. Between the buildings and Manning Avenue?

A. Right.

Q. How many in that group? A. Three.

Q. But most of them are in the group behind the buildings?

A. Yes, one long line of scrapers. [12]

Q. You were employed as office manager by Miller Scraper Co. at the time these items were sold to Consolidated? A. Yes, I was.

(Testimony of Charles R. Miller.)

Q. Are you familiar with the work in the shop at Miller Scraper Co.?

A. To some extent. I never had much to do with that out there, generally.

Q. You handled the selling or material and equipment as it was prepared for sale or sold?

A. Yes.

Q. These items of equipment—were these all completed in the shop before they were sold?

A. Yes, most generally they were completed in lots of five or ten or fifteen.

Q. Then when they were completed, what was done with them?

A. We made up a billing to the Bank of America for the account of Consolidated and then the money was deposited into our account by the bank.

Q. You know what was done with the machines at the time the billing was made?

A. You mean as to where they were located?

Q. What did you do with them?

A. We usually took them out where they are now and parked them out there. Of course, sometimes there would be a sale come up and they would go right out. Normally, they would be parked out where they are parked now.

Q. There are about twenty-six pieces of equipment there now? [13]

A. Yes.

Q. There were no name tags placed on the machines?

A. No, not on Consolidated's machines.

Q. You said that some repairs were made on

(Testimony of Charles R. Miller.)

the machines from time to time. At whose request were these repairs made?

A. Well, those repairs were not actually repairs. Maybe like the hydraulic line or cylinder shafts, the exposed parts would become rusty. We wouldn't send out a machine like that. We would go ahead and prepare it for shipment. It was usually on our own account that we did that. We didn't want them going out like that.

Q. You did not bill anyone for that work?

A. No.

Q. Were you directed by anyone to do that work?

A. No. Just ourselves. They had to sit out there and naturally being exposed, not under cover, and occasionally a tire will go down or a shaft needs to be polished.

Q. And that work was done whenever you deemed it necessary? A. Yes.

Q. Was any of this equipment ever used for demonstration purposes by Miller.

A. No. There was one used by Consolidated for demonstration purposes.

Q. Miller Scraper didn't ever take any of these machines out for demonstration? A. No.

Q. Were any of those pieces of equipment ever sold by Miller Scraper to a third party? [14]

A. No, not as long as the contract with Consolidated was in effect.

Q. All during the time that the contract was in effect, occasions would not arise where an order

(Testimony of Charles R. Miller.)

would come in and Miller would take one of those machines to fill the order and then replace it?

A. No. They (reference to Consolidated) had exclusive distribution.

Q. In other words, you did no retail selling at all?

A. That is right.

Q. Did Miller Scraper carry any insurance on these rotary scrapers that were stored there?

A. Consolidated carried the insurance.

Q. None was carried by Miller?

A. No.

Mr. Joy: I believe that is all.

Mr. Bechtel: Were you a stockholder of Miller Scraper Co.?

Mr. Miller: No.

Q. Do you know who the stockholders were?

A. Kenneth Miller had all of the stock.

Q. He owned it all?

A. He owned all the stock.

Q. Do you know who the stockholders are of Consolidated Distributors?

A. Well, there has been a change in stockholders in the last year or so. I don't know exactly who they are or what percentages they own right now.

Q. To your knowledge, does your brother, Kenneth Miller, now, [15] or did he ever own any stock in Consolidated?

A. No.

Q. Did you ever own any stock in Consolidated?

A. No.

Q. Do you own any now?

A. No.

Q. Does anyone, to your knowledge, who is connected with Miller Scraper own stock in Consoli-

(Testimony of Charles R. Miller.)

dated? A. Not to my knowledge. No.

Q. Where did Consolidated maintain their local office?

A. In a portion of our building there on the property.

Q. You referred to a contract that was in existence between Miller Scraper Co. and Consolidated relative to the scrapers. Do you know the nature of that contract?

A. Well, no, other than that it gave them exclusive distribution of our scrapers.

Q. How long was this contract in existence, do you know? A. Approximately two years.

Q. When did this contract terminate, do you know?

A. December of 1953, I guess it was.

Q. Has the Miller Scraper Co. operated since that time? A. Yes, we have.

Q. In the manufacture of scrapers?

A. In the manufacture of scrapers and other items.

Q. How was the sale of scrapers handled subsequent to December, 1953 when the contract was terminated?

A. They were handled direct from our office. No other distributor was involved.

Q. Were the scrapers that you manufactured after that date in [16] December which you referred to, were they the identical scrapers that you had previously sold to Consolidated?

A. No, we had an agreement with Consolidated

(Testimony of Charles R. Miller.)

that we would not manufacture any of the size scrapers that they had in stock, that we would manufacture a larger size.

Q. No similar scrapers were manufactured or sold by you after that time.

A. Similar scrapers, but larger capacity.

Q. Do you know of any pieces of equipment that was moved to Chandler Field? A. Yes.

Q. I want to know particularly if it was equipment you moved to Chandler Field or if it was moved by Consolidated?

A. It was not moved by us—it may have been by Consolidated.

Q. You don't know anything about that?

A. No.

Mr. Bechtel: I believe that is all.

Mr. Joy: Mr. Miller, what arrangement was there between Miller Scraper Co. and Consolidated Distributors in regard to the office of Consolidated on your property?

A. Well, our office building is so arranged that it can take care of two individual offices and we just charged them a monthly office rent.

Q. And you rented office space to them?

A. Yes.

Q. Did they have their own office equipment or did you supply it.

A. They had their own office equipment.

Q. Did they have their own telephone there?

A. Yes. [17]

Q. I suppose they had their own post office box?

(Testimony of Charles R. Miller.)

A. Yes.

Q. Did they have any sign on their office indicating that it was the office of Consolidated Distributors?

A. Yes, we had signs out in front indicating that it was the office of Miller Scraper and Mfg. Co. and Consolidated Distributors, Inc.

Q. Where was this sign located?

A. Right over the front door.

Q. And that said, generally, "Offices of Miller Scraper & Mfg. Co. and Consolidated Distributors, Inc."?

A. Yes.

Q. What size was that?

A. I would say approximately twelve by thirty-six inches.

Q. There were no signs anywhere else on the property bearing Consolidated's name?

A. No.

Mr. Joy: That will be all.

Mr. Bechtel: I have no further questions.

JOHN AXMAN

Called as a witness by Mr. Bechtel, being first duly sworn, testified as follows:

Mr. Bechtel: What is your full name?

Mr. Axman: John Axman.

Q. By whom are you employed?

A. At present?

Q. Yes. A. I am unemployed.

Q. Were you ever employed by Consolidated Distributors?

A. Yes. [18]

Q. In what capacity? A. As a salesman.

(Testimony of John Axman.)

Q. When did your employment terminate?

A. At the time Consolidated's contract with Miller Scraper was terminated.

Q. Do you recall when that was?

A. Approximately December of 1952.

Q. That is the date that Mr. Miller testified was the termination date of the contract?

A. Yes. May I clear up one point? Previous to that date I was employed as a salaried employee by Consolidated. Since then, I have sold some of their equipment on a commission basis.

Q. When were you first employed by Consolidated?

A. At the origination of the organization, in 1952.

Q. Approximately when in 1952?

A. Spring of 1952, I believe.

Q. It was prior to the dates which have been recited here as appearing on the trust receipts introduced in evidence?

A. Yes.

Q. And I understand that from the date of your employment until December of 1953 you were a salaried employee?

A. Yes.

Q. By whom were you paid?

A. Consolidated.

Q. Did you receive any payment of money from Miller Scraper?

A. Not prior to that.

Q. You say "not prior"—you mean not prior to December, 1953? [19]

A. That is right.

Q. Were you at that time an officer of the Consolidated Distributors?

(Testimony of John Axman.)

A. During part of that time.

Q. What was your title? A. Director.

Q. Where was the head office of Consolidated Distributors?

A. Fort Morgan, Colorado. For a time they were in Fresno, then moved back to Fort Morgan.

Q. Have they other places of business than this one in Selma? A. Yes.

Q. Were you a stockholder? A. Yes.

Q. Do you know who the other stockholders were? A. Yes.

Q. At any time during your association with Consolidated did any person in Miller Scraper Co. have any interest in Consolidated Distributors?

A. Not to my knowledge.

Q. Was Consolidated strictly a selling organization?

A. Strictly a selling organization.

Q. They did no manufacturing? A. No.

Q. Do you have with you a copy of the contract that was entered into between Consolidated and Miller Scraper? A. No, I don't.

Q. Do you, of your own knowledge, know generally what that contract contained?

A. Generally speaking, yes.

Q. To whom did Consolidated generally sell?

A. To retail dealers throughout the states.

Q. And were these sales made directly by Consolidated?

A. Yes. To the retail dealers. [20]

Q. Would they always be on a cash basis?

(Testimony of John Axman.)

A. No.

Q. In the event credit was extended, by whom was it extended?

A. The credit was extended by Consolidated in conjunction with the Bank of America.

Q. Would you take a contract or open book account?

A. That depended on the financial statement of the individual dealer.

Q. It might be either one? A. Yes.

Q. Was there a time during your association with Consolidated that some of this equipment was moved to Chandler Field? A. Yes.

Q. And is that equipment all part of the equipment described in the trust receipts in evidence?

A. I think that is correct.

Q. What was the purpose in moving them to Chandler Field?

A. For a period of time Consolidated maintained offices at Chandler Field.

Q. Was that office subsequently closed?

A. Yes.

Q. At that time, what happened to the equipment?

A. I think it was taken back and placed on the lot of Miller's along with the rest.

Q. That move was made with the consent of the bank? A. I am sure it was.

Q. Is Consolidated still in business elsewhere?

A. Yes.

Mr. Bechtel: I think that is all.

(Testimony of John Axman.)

Witness questioned by Mr. Joy. [21]

Mr. Joy: Did Consolidated continue to maintain an office at Miller Scraper after the termination of the contract in December, 1953?

Mr. Axman: I might have to go around—after the 1953 contract was terminated, we made another contract with Miller in December, 1953 and this contract was that we would work together to dispose of Consolidated's merchandise. At that time I had an office in Miller Scraper Co.

Q. You paid rent for that office? A. Yes.

Q. Did Consolidated pay for it or did you personally pay it? A. Consolidated paid it.

Q. Is there any office equipment or furniture of Consolidated's on the Miller premises now?

A. Yes.

Mr. Joy: I think that is all.

The Court: That will be all, Mr. Axman.

Mr. Bechtel: I would like to offer to the Trustee a stipulation at this time that the bank or Mr. Axman or anyone at the bank who has control, that this equipment be sold as promptly as possible and that whatever claim or interest the Trustee may have, as later determined, then pass on to the Receiver without prejudice to either party's interest. I think that we will realize much less for the equipment if the delay is much longer, as this is probably the height of the season.

Mr. Joy: It is agreed. It is stipulated that the items on the trust receipts may be sold and the funds to be impounded.

The Court: The funds are to be delivered to the Trustee and be [22] impounded by him in a separate bank account and that the one piece of equipment now already sold will be turned over and delivered to the buyer thereof upon payment to the Trustee by Bank of America of \$2273.00. And that all right, title and interest of Consolidated Distributors and the Bank of America will be transferred to the proceeds of said sale, without prejudice to the rights of any of the parties involved. This is merely a stipulation. Also, that the equipment be valued at the usual price as they have been sold in the past, unless with the consent of all parties involved, including the Trustee.

Mr. Joy: I would also like to stipulate that Miller Scraper four and one-half cubic yard, serial No. D-0131 listed on trust receipt No. 29RF1837 can be immediately released upon payment to the Receiver of the sum of \$2273.00 by Bank of America, said sum to be impounded by the Receiver pending the determination of the rights and liens of the various parties in and to said property, and/or the proceeds of sale thereof, all of which rights and liens will transfer to the said proceeds and without prejudice to the rights of the parties.

Mr. Bechtel: I will stipulate to that on behalf of the Bank.

The Court: The stipulation is approved.

The Court: Court will adjourn now and the case will be continued for all purposes until a time to be agreed upon. [23]

[Endorsed]: Filed June 3, 1955.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Fresno, California

August 20, 1954

Order to Show Cause vs. Consolidated Distributors and Bank of America, why the Bank of America should not appear and show the nature and effect and validity of any interest or lien that it may have in or to any of the property of the bankrupt in the above matter.

Present in court was Mr. Joseph L. Joy, 1405 Security Bank Building, Fresno, California, attorney for the Trustee in Bankruptcy of Miller Scraper & Mfg. Co., Inc., and Mr. H. H. Bechtel of San Francisco, California, attorney for the Bank of America.

Whereupon the proceedings were had and the following is the testimony of

MR. CHARLES R. MILLER

to-wit:

Mr. Miller was sworn by the Referee.

Mr. Joy: Your name is Ray Miller?

Mr. Miller: Charles R. Miller.

Q. Will you tell the court your connection with Miller Scraper Co.?

A. I was a brother of the owner, who was Kenneth L. Miller and [1]* my capacity was office man-

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Charles R. Miller.)

ager and I took care of various office duties that came up.

Q. Are you familiar with the Miller Scraper premises down there? A. Yes.

Q. We have been discussing certain rotary scrapers that are involved in certain trust deeds with the Bank of America and Consolidated Distributors. Are you familiar with these pieces of equipment. A. Yes, I am.

Q. Will you tell us where these pieces of equipment are located on the Miller premises?

Mr. Bechtel: Please, for the record, I would like to enter an objection to any testimony regarding the location of the scrapers at this time. My purpose—I believe that under trust deed financing question of changing of possession is involved and I would like to preserve my rights by entering an objection.

Objection overruled by Referee.

Mr. Joy: Now, will you tell us where these scrapers are located on the premises of Miller Scraper Company?

Mr. Miller: We have approximately 4 acres there. The buildings I would say, take up possibly one acre of the property. The rest is just open ground. They are located on the back portion of our property. They are grouped together, kept together back there.

Q. Is the property fenced? A. No.

Q. Unfenced? A. Unfenced. [2]

Q. Does the Miller Scraper Co. store any prop-

(Testimony of Charles R. Miller.)

erty on the four acre plot which is not covered with buildings?

A. We made three different types of equipment that was involved with Consolidated.

Q. What other types of equipment do you make?

A. Reversible disc plows and a forage wagon.

Q. Where was that equipment stored with relation to the scrapers?

A. Some of it was located near where the scrapers were stored. Others were located closer to the buildings, over next to the office.

Q. Do you also make Miller orchard heaters?

A. We discontinued them about 3 years ago.

Q. Are any of those stored down there on the premises? A. Yes, there are two.

Q. Where, with reference to the scrapers, are these orchard heaters stored?

A. They were stored clear to the far end of the property, down in what we call our junk pile. They are no longer usable. The motors have been pulled out.

Q. Looking from the highway — first there are the buildings near Manning Avenue, then behind the buildings, toward the rear, there are located these rotary scrapers. A. Yes.

Q. Behind that there are the orchard heaters?

A. Yes, and other obsolete pieces of equipment.

Q. Are there any signs or identification placed on these rotary scrapers to indicate to whom they belong? A. No, there is not.

Q. Are these groups of scrapers close together?

(Testimony of Charles R. Miller.)

A. Actually, the main part of them are in one line. Then we have two or three others on the other side of the building that for some reason or other we have made improvements or repaired them. They have been sitting there for a matter of months and we have had to make minor repairs.

Mr. Bechtel: May the record show that my objection will go to all this testimony?

Mr. Joy: And most of these scrapers are in one long line to the rear of the building? Then the others are where?

Mr. Miller: Next to the lot—more in front of the buildings.

Q. Between the buildings and Manning Avenue?

A. Right.

Q. How many in that group? A. Three.

Q. But most of them are in the group behind the buildings?

A. Yes, one long line of scrapers.

Q. You were employed as office manager by Miller Scraper Co. at the time these items were sold to Consolidated? A. Yes.

Q. Are you familiar with the work in the shop at Miller Scraper Co.?

A. To some extent. I never had much to do with that out there, generally. [4]

Q. You handled the selling or material and equipment as it was prepared for sale or sold?

A. Yes.

Q. These items of equipment, were these all completed in the shop before they were sold?

(Testimony of Charles R. Miller.)

A. Yes, most generally they were completed in lots of five or ten or fifteen.

Q. Then when they were completed, what was done with them?

A. We made up a billing to the Bank of America for the account of Consolidated and then the money was deposited into our account by the bank.

Q. You know what was done with the machines at the time the billing was made?

A. You mean as to where they were located?

Q. What did you do with them?

A. We usually took them out where they are now and parked them out there. Of course, sometimes there would be a sale come up and they would go right out. Normally, they would be parked out where they are parked now.

Q. There are about 26 pieces of equipment there now? A. Yes.

Q. There were no name tags placed on the machines?

A. No, not on Consolidated's machines.

Q. You said that some repairs were made on the machines from time to time. At whose request were these repairs made?

A. Well, those repairs were not actually repairs—maybe like the hydraulic line becomes rusty, or the cylinder shafts—the exposed parts become rusty. We wouldn't send out a [5] machine like that. We would go ahead and prepare it for shipment. It was usually on our own account that we did that. We didn't want them going out like that.

(Testimony of Charles R. Miller.)

Q. You did not bill anyone for that work?

A. No.

Q. Were you directed by anyone to do that work?

A. No, just ourselves. They had to sit out there and naturally being exposed, not under cover and occasionally a tire will go down or a shaft needs to be polished.

Q. And that work was done whenever you deemed it necessary? A. Yes.

Q. Was any of this equipment ever used for demonstration purposes by Miller?

A. No. There was one used by Consolidated for demonstration purposes.

Q. Miller Scraper didn't ever take any of these machines out for demonstration? A. No.

Q. Were any of those pieces of equipment ever sold by Miller Scraper to a third party?

A. No, not as long as the contract with Consolidated was in effect.

Q. All during the time that the contract was in effect, occasions would not arise where an order would come in and Miller would take one of those machines to fill the order and then replace it?

A. No. They (Consolidated) had exclusive distribution.

Q. In other words, you did no retail selling at all? [6] A. That is right.

Q. Did Miller Scraper carry any insurance on these rotary scrapers that were stored there?

A. Consolidated carried the insurance.

(Testimony of Charles R. Miller.)

Q. None was carried by Miller? A. No.

Mr. Joy: I believe that is all.

Witness questioned by Mr. Bechtel.

Mr. Bechtel: Were you a stockholder of Miller Scraper Co.?

Mr. Miller: No.

Q. Do you know who the stockholders were?

A. Kenneth Miller had all of the stock.

Q. He owned it all?

A. He owned all the stock.

Q. Do you know who the stockholders are of Consolidated Distributors?

A. Well, there has been a change in stockholders in the last year or so. I don't know exactly who they are or what percentage they own right now.

Q. To your knowledge, does your brother, Kenneth Miller now, or did he ever own any stock in Consolidated? A. No.

Q. Did you ever own any stock in Consolidated?

A. No.

Q. Do you now? A. No.

Q. Does anyone, to your knowledge, who is connected with Miller Scraper own stock in Consolidated?

A. Not to my knowledge. No. [7]

Q. Where did Consolidated maintain their local office?

A. In a portion of our building there on the property.

Q. You referred to a contract that was in existence between Miller Scraper Co. and Con-

(Testimony of Charles R. Miller.)

solidated Distributors relative to the scrapers. Do you know the nature of that contract?

Q. Well, no, other than it gave them exclusive distribution on our scrapers.

Q. How long was this contract in existence, do you know? A. Approximately two years.

Q. When did this contract terminate, do you know?

A. December, 1953, I guess it was.

Q. Has the Miller Scraper Co. operated since that time? A. Yes, we have.

Q. In the manufacture of scrapers?

A. In the manufacture of scrapers and other items.

Q. How was the sale of scrapers handled subsequent to December, 1953, when the contract was terminated?

A. They were handled direct from our office, no other distributor was involved.

Q. Were the scrapers that you manufactured after that date in December which you referred to, were they identical scrapers that you had previously sold to Consolidated?

A. No, we had an agreement with Consolidated that we would not manufacture any of the size scrapers that they had in stock, that we would manufacture a larger size.

Q. No similar scrapers were manufactured or sold by you after that time? [8]

A. Similar scrapers, but larger capacity.

Q. Do you know of any pieces of equipment

(Testimony of Charles R. Miller.)

that were moved to Chandler Field? A. Yes.

Q. I want to know particularly if it was equipment you moved to Chandler Field or if it was moved by Consolidated?

A. It was not moved by us. It may have been by Consolidated.

Q. You don't know anything about that?

A. No.

Mr. Bechtel: That will be all.

Witness questioned by Mr. Joy.

Mr. Joy: Mr. Miller, what arrangement was there between Miller Scraper Co. and Consolidated Distributors in regard to the office of Consolidated on your property?

Mr. Miler: Well, our office building is so arranged that it can take care of two individual offices and we just charged them a monthly office rent.

Q. And you rented office space to them?

A. Yes.

Q. Did they have their own office equipment or did you supply it?

A. They had their own office equipment.

Q. Did they have their own telephone there?

A. Yes.

Q. I suppose they had their own post office box?

A. Yes.

Q. Did they have any sign on their office indicating that it was the office of Consolidated Distributors?

A. Yes, we had signs out in front indicating

(Testimony of Charles R. Miller.)

that it was [9] the office of Miller Scraper Co. and Consolidated Distributors.

Q. Where was this sign located?

A. Right over the front door.

Q. And that said generally, "Offices of Miller Scraper Co. and Consolidated Distributors?"

A. Yes.

Q. What size sign was that?

A. I would say approximately twelve by thirty-six.

Q. There were no signs anywhere else on the property bearing Consolidated's name?

A. No.

Mr. Joy: I believe that is all. [10]

[Endorsed]: Filed June 3, 1955.

In the United States District Court, Southern District of California, Northern Division

No. 8097

BANK OF AMERICA,

Plaintiff,

vs.

MILLER SCRAPER and MANUFACTURING
COMPANY, and CONSOLIDATED DIS-
TRIBUTORS, INCORPORATED,

Respondents.

TRANSCRIPT OF PROCEEDINGS

Continuance of Hearing of Order to Show Cause

why Bank of America should not appear and show the nature and extent and validity of any interest or lien that it may have in or to any of the property of Miller Scraper and Manufacturing Company.

Mr. H. H. Bechtel of San Francisco, California, was present representing the Bank of America, Mr. Eckhart A. Thompson of Fresno, California, representing Joseph L. Joy, Trustee of Miller Scraper and Manufacturing Company, and Messrs. Charles R. Barrett and Dan Jensen, representing Consolidated Distributors, Inc.

The above-entitled matter came on for hearing on October 14, 1954, at the hour of 10:00 o'clock a.m. before William A. McGugin, Referee in Bankruptcy.

Whereupon, the following proceedings were had and testimony taken, to wit: [1]*

Mr. Barrett: On August 20 of this year there was a hearing on an Order to Show Cause brought by the Trustee of this bankrupt against the Bank of America. I have read the transcript on that case and it appears that at that date it developed that Consolidated Distributors also had an interest and the matter was continued to this time. A new Order to Show Cause appears in the file directed both against Bank of America and Consolidated. Mr. Dan Jensen and myself are representing Consolidated Distributors and Mr. Bechtel is here again

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

for Bank of America. It does not appear that counsel for the Trustee is here yet.

Recess of 5 minutes to call Eckhart A. Thompson, attorney for the Trustee of Miller Scraper & Mfg. Co.

The Court: Are we ready to proceed with the continued hearing upon an Order to Show Cause why Consolidated Distributors, Inc. and Bank of America should not show and establish the nature and amount and validity of any claims or liens they have against the assets of the bankrupt, Miller Scraper and Manufacturing Co.

Mr. Barrett: Ready for Consolidated Distributors.

Mr. Thompson: Ready for the Trustee.

Mr. Bechtel: Ready for Bank of America.

Mr. Barrett: I will call Mr. W. A. Reynolds.

W. A. REYNOLDS

called as a witness on behalf of Consolidated Distributors, Inc., being first duly sworn, testified as follows: [2]

Mr. Barrett: Would you state your full name?

Mr. Reynolds: Wayne Albert Reynolds.

Q. Where do you reside?

A. 4614 East Fillmore, Fresno.

Q. What is your present occupation?

A. Dealer in industrial equipment and machinery.

Q. Heavy industrial equipment? A. Yes.

Q. How long have you been actively engaged in business, in dealing in heavy equipment?

(Testimony of W. A. Reynolds.)

A. Of this nature?

Q. Just generally speaking—how many years?

A. About 15 years.

Q. What is Consolidated Distributors, Inc?

A. It is a distributing firm operating expressly to distribute heavy earth moving equipment.

Q. It is a California corporation?

A. Yes.

Q. Admitted to do business in this state?

A. Yes.

Q. Was there a prior organization?

A. Yes.

A. Previous to its organization it had done business as Industrial Equipment Company, Inc.?

A. Yes.

Q. Consolidated Distributors is a separate business entity to the past named business?

A. That is right.

Q. In 1952 were you an officer of Consolidated Distributors? If so, what office did you hold?

A. President of Consolidated Distributors.

Q. You are acquainted with Mr. Ray Miller and Mr. Kenneth Miller and they are officers of Miller Scraper & Mfg. Co.? A. Yes. [3]

Q. You were acquainted with them in business?

A. Yes.

Q. Where did the Miller Scraper Co. do business in Fresno County?

A. On Highway 99 and Manning Avenue.

Q. That is a short distance from Selma?

A. Yes.

(Testimony of W. A. Reynolds.)

Q. Did Consolidated Distributors also do business at the same location? A. Yes.

Q. Consolidated Distributors and Miller Scraper had offices in the same frame building situated near the intersection of Manning Avenue and Highway 99? A. That is right.

Q. How large was this building, about?

A. About 16 by 30 feet, I believe.

Q. And the main doorway—by the way, how many entrances led from the outside to the inside of this building? A. One.

Q. Just one front entrance on the building on the Manning Avenue side? A. Correct.

Q. Was there any porch on that building?

A. Yes.

Q. Were there any signs on the porch?

A. Yes.

Q. What was on the signs?

A. Consolidated Distributors and Miller Scraper.

Q. Did not the sign say Offices of Consolidated Distributors, Incorporated and Miller Scraper and Manufacturing Company—didn't it list both corporations? A. Yes.

Q. Was there any sign on the doorway leading from the outside to the inside?

A. On the doorway? No.

Q. Was there a sort of hallway on the inside?

A. Yes.

Q. And there was a door from that hallway to the inner [4] offices? A. Yes. Right.

Q. Was there any sign on that doorway?

(Testimony of W. A. Reynolds.)

A. Yes.

Q. What was on that sign?

A. Miller Scraper & Manufacturing Co.

Q. Was there a sign, roughly on the left, leading into the private offices, from the hallway?

A. Yes.

Q. What did that sign say?

A. Consolidated Distributors.

Q. This sign was on the door leading to the private offices of Consolidated Distributors?

A. Yes.

Q. And the sign said Consolidated Distributors, Inc.?

A. Yes.

Q. Did Consolidated Distributors pay any rent for the use of these offices.

A. Yes.

Q. To whom was it paid, and how much?

A. We paid \$50 a month to Miller Scraper.

Q. Cash each month during the period of occupancy?

A. Cash or credit.

Q. To whom was it paid?

A. To Ray Miller, usually, who was office manager and took care of that part of the business.

Q. Did Miller Scraper and Consolidated have separate stationery and billheads?

A. Yes.

Q. Did the corporations I just named have separately listed telephone numbers?

A. Yes.

Q. What was the telephone number of Consolidated Distributors, do you recall? If you can't recall, it isn't important.

A. It was a Fowler number, I can't recall it.

Q. But you recall separate listings in the tele-

(Testimony of W. A. Reynolds.)

phone directory? A. Yes.

Q. Did Consolidated Distributors have separate post office mailing address from Miller Scraper?

A. Yes.

Mr. Barrett: Mr. Thompson, I believe you have seen and inspected the matters I am going to refer to next?

Mr. Thompson: I have not had a chance to read them.

Mr. Barrett: What was your capacity in the office?

Mr. Reynolds: Sales manager.

Q. Sales manager as well as president?

A. Yes.

Q. You actually ran the office? A. Yes.

Q. About what time during what year and month was it that Consolidated Distributors opened its office?

A. The 15th of June, 1952. The office was just built and we took occupancy before it was quite finished.

Q. Inside your office you had desks, filing cabinets and other office equipment? A. Yes.

Q. You were there during business hours?

A. Yes.

Q. You had some girls working for you?

A. I had one girl.

Q. On the other side, in the offices of Miller Scraper, who was in that office?

A. Ray Miller and a Mr. Huxley.

Q. Did they have an office girl? A. No.

(Testimony of W. A. Reynolds.)

Q. Did they have desks, filing cabinets and other office equipment in that office? A. Yes. [6]

Q. Was there a written agreement made between Consolidated Distributors, Inc., and Miller Scraper relative to the business relationship of the companies? A. Yes.

Q. That written agreement, who had part in negotiating it, did you? A. Yes.

Q. Was it an agreement under which business was conducted by these two organizations?

A. Yes.

Q. I will show you a written agreement bearing date of March 20, 1952. It is a confirmed agreement, not actually signed and bears the certification of the County Recorder of Fresno County, certifying that this is a true and correct record from the public records of Fresno County. Would you tell us if this is the agreement entered into between the company you represent and Miller Scraper Company? A. Yes, it is.

Mr. Barrett: I move, your Honor, that this be received as the exhibit first in order for Consolidated Distributors.

The Court: Received as Exhibit A for Consolidated Distributors.

[See pages 191-204]

Mr. Barrett: I am going to show you a second agreement, which is actually an amended and supplemental agreement dated April 4, 1952. Do you recognize it? A. Yes.

(Testimony of W. A. Reynolds.)

Q. The previous agreement was amended by this later supplemental agreement?

A. That is right.

Q. It also bears the certification of the County Recorder that it is a true and correct copy of the public records of this county?

A. Yes, that is correct.

Mr. Barrett: Your Honor, I move that this second agreement be [7] received as the exhibit next in order for Consolidated.

The Court: Received as Exhibit B for Consolidated Distributors.

[See pages 204-212]

Mr. Bechtel: I would like to make a suggestion that the exhibits being offered by Consolidated Distributors bear a different designation than those offered by Bank of America.

The Court: Such as?

Mr. Bechtel: Well, such as numbers instead of letters. We have exhibits designated as Exhibit A, Exhibit B, and so on. Couldn't Consolidated's exhibits be Exhibit 1, Exhibit 2?

The Court: We have the Trustee's exhibits numbered. It makes for easy reference.

Mr. Bechtel: Well, I would suggest that Consolidated's exhibits be marked Exhibit A-1.

Mr. Barnett: Could we have them marked Consolidated's Exhibit A?

Mr. Bechtel: In other words, Consolidated's exhibits will be indicated by Consolidated Exhibit A.

The Court: The second contract, dated April 4,

(Testimony of W. A. Reynolds.)

1952, will be received and marked Exhibit B of Consolidated Distributors.

Mr. Barnett: These two agreements are the basic agreements under which these two companies conducted their respective business affairs?

Mr. Reynolds: Yes.

Q. Under paragraph 3, is it true that Consolidated Distributors took all of the output of Miller Scraper insofar as scrapers were concerned, of every size, kind and nature? A. Yes. [8]

Q. Would you describe for the Court the premises other than the office building we already described. The manufacturing plant, it is housed in two rectangular corrugated steel buildings?

A. Yes.

Q. The premises of Miller Scraper Company are roughly round in shape, are they?

A. More triangular because of the railroad and highway. The premises are bounded on the west by the railroad track, right beyond which lies Highway 99.

Q. Highway 99 and Manning Avenue?

A. Right.

Q. Can you give us an estimate of how many acres the premises covers? A. About 4 acres.

Q. These two corrugated steel buildings housing the manufacturing plant of Miller Scraper are located at an angle? A. Right.

Q. Situated in an L shape? A. Right.

Q. They are situated, each of them, on that por-

(Testimony of W. A. Reynolds.)

tion of the premises next to the intersection of Manning Avenue and the railroad?

A. Right.

Q. The office building was situated in an easterly direction from that point? A. Yes.

Q. South of these buildings, including the manufacturing buildings and the office was a small shed used as a paint shop by Miller Scraper?

A. Yes.

Q. It was actually a substantial corrugated building? A. Yes.

Q. Would you describe what was the last operation in the process of the manufacture of scrapers—what did it consist of? [9]

A. The last process was painting, and mounting and airing tires.

Q. They were painted in the paint shop on the premises? A. Yes.

Q. What happened after the last process was done on a particular scraper?

A. It was delivered to our lot.

Q. What happened then and where on the lot were they delivered? Where was the lot?

A. Our lot could be described as the Northeast portion of this piece of land that Miller set aside exclusively for the storing of Consolidated Distributors' equipment.

Q. Quoting you the language of paragraph 3 of this agreement, as amended, "The Miller Scraper & Manufacturing Co. agrees that the scrapers are to be delivered to the distributor FOB carrier at

(Testimony of W. A. Reynolds.)

Selma, California, or are to be stored, etc.” What portion of the premises was used as a storage place? The portion you just described?

A. Yes.

Q. How much land did that portion occupy?

A. About one-fourth of the premises.

Q. When Miller Scraper had completed painting and airing the tires, did they just take these scrapers out and park them in your yard?

Objection by Mr. Thompson. Objection overruled.

Q. With respect to these scrapers that were pulled over there by Miller——? [10]

A. They were pulled by one of his men.

Q. By what method were they pulled?

A. By tractor.

Q. Did this tractor have any sign indicating it was property of Miller Scraper? A. No.

Q. A J. I. Case Model S which is a plain farm tractor? A. Yes.

Q. In what manner were the scrapers lined up or disposed of?

A. In groups according to size as near as possible—No. 2, 3, 4½, 6½, and left in line. Sometimes when we had a large inventory we had to make two lines.

Q. Sometimes one line and sometimes two?

A. Yes.

Q. Miller’s service man would unhook them and leave them there? A. Yes.

Q. These scrapers were parked in a certain portion of the premises? A. Right.

(Testimony of W. A. Reynolds.)

Q. The same portion of the premises that you previously testified took up one-fourth of the area?

A. That is right.

Q. At that point, after the scrapers were unhooked and parked, did Miller at any time thereafter take any scrapers out or exercise any control over them? A. No.

Q. At the time Miller Scraper unhooked the scrapers, was there any representative of Consolidated there to inspect the machines? A. Yes.

Q. Who was there and what was done?

A. Either myself or my son, James Reynolds, was there to inspect the scraper, the workmanship, and get the model and [11] serial number.

Q. And if these were all found to be in good order, what was done?

A. The machine was received.

Q. Were there any documents filled out by you or by James Reynolds, your son?

A. We had inspection reports made out by Mr. Miller's men and receipted by us.

Q. The receipt was also signed by Mr. Miller's men?

A. They delivered the equipment and actually he was supposed to do this himself, but my son or I signed our own inspection and delivery receipts.

The Court: As each machine was pulled over from the storage there was a representative there from Consolidated Distributors?

A. We were on the grounds and in the office at all times.

(Testimony of W. A. Reynolds.)

The Court: When these various tractors pulled the equipment over to the storage lot and delivered them to Consolidated Distributors did Mr. Miller unhook them or did he have one of his representatives there at the time?

A. Either one. Either Mr. Miller or one of his representatives.

The Court: And the inspection sheet showing the condition of the equipment and the serial number and so forth was filled out and signed by you as having been delivered by Miller Scraper?

A. Yes. Either by me or by my son.

Mr. Barrett: You kept the original of that inspection sheet?

A. It was kept in Miller's office. We had a copy.

Q. At the time and place when you and your son would receive [12] these scrapers, did you or your son also make out documents entitled "Trust Receipts"? A. Yes.

Q. At the time the newly manufactured scrapers were unhooked from the tractor to be inspected for workmanship, serial number, and so forth?

A. Yes.

Q. You identified them by numbers which indicated which scraper you received?

A. Right.

Q. Did you enter the serial number on the trust receipt? A. Yes.

Q. Referring again to the contents of this written agreement, Exhibit A1 for Consolidated in this hearing which calls for delivery of equipment

(Testimony of W. A. Reynolds.)

on the 1st and 15th of each month. When did you receive invoices from Miller Scraper?

A. On the 1st and 15th.

Q. At that time were they attached to the Trust Receipts?

A. At that time we attached our copy to the Trust Receipts.

Q. In other words, as soon as you received an invoice from Miller Scraper it was attached to the Trust Receipt. A. Yes.

Mr. Barrett: Your Honor, at the previous hearing, the Trust Receipts and attached documents were received in evidence. May I have them just so I can identify them for this record?

Mr. Bechtel: I believe they were later withdrawn and photostated.

Mr. Minear: I have the originals.

Mr. Barrett: Your Honor, I have the originals here, if there is no objection with reference to these. [13]

Mr. Thompson: No objection.

Mr. Barrett: Mr. Reynolds, I show you documents which have been previously introduced in evidence and photostats were made and substituted. You see these 5 documents? A. Yes.

Q. On green papers? A. Yes.

Q. With attached invoices? A. Yes.

Q. These documents which are Exhibits A, B, C, D and E respectively are the Trust Receipts that you spoke of? A. Yes.

Q. I notice that all of these papers are signed

(Testimony of W. A. Reynolds.)

by James Reynolds—he is your son? A. Yes.

Q. This is his signature? A. Yes.

Q. The description of these scrapers, the year, model number, capacity and serial number, these were obtained by you or your son, were they not?

A. Yes.

Q. You have before you the Trust Receipts. They have various column headings. The first heading is “year”. Under that heading appears in each case “1953”. Is that the year these scrapers were pulled out and parked on your lot? A. Right.

Q. The next heading is “Make”. Without exception it appears as “Miller”. That refers to Miller Scraper & Mfg. Co.? A. Right.

Q. The next heading is “Article”—under that appears “Rotary Scraper”—then by its capacity in yards—2 cubic yards, or 3 or 4½ cubic yards, and so forth—correct? A. Yes.

Q. At the time you examined these scrapers you observed their capacity? A. Yes. [14]

Q. The next heading is “Model”—these show various models. A. Right.

Q. The next is “Serial Number”. The serial numbers have a letter preceding them—A, B, C, D?

A. Right.

Q. A, B, C, and D before these serial numbers designates size? A. That is right.

Q. The next heading is “Cost” with figures in dollars and cents? A. Right.

Q. The next heading is “Release Price” which

(Testimony of W. A. Reynolds.)

is filled in. Did you or your son fill in the cost or release price?

A. Yes. We made them out after the face of the Trust Receipt was filled out — after we had the Trust Receipts.

Q. You filled out and completed these documents? A. Yes.

Q. Attached to each one of these Trust Receipts are copies of invoices which I assume are separately represented in record as exhibits. Do you see the number of invoice copies attached to each receipt? A. Yes.

Q. These being copies of Miller's? A. Yes.

Q. You observe these invoices as dated on or near the first or middle of each month?

A. Right.

Q. Were these copies and invoices received by Consolidated Distributors from Miller Scraper Co.?

A. Yes.

Q. When you received the equipment you attached all your papers to the Trust Receipts?

A. Right.

Q. And the invoice states the aggregate amount of the billing for scrapers theretofore turned over to you? A. Yes. [15]

Q. Then what was your procedure when the invoice had been received and the Trust Receipt was completely filled out and executed by you or your son? A. We took them to the bank.

Q. That is, you took them to the Bank of America's branch in Selma? A. Right.

(Testimony of W. A. Reynolds.)

Q. How was financing on these units handled?

A. Well, if I understand your question correctly, the Bank of America floored and financed 90% of the manufacturer's cost. It shows on the Trust Receipt.

Q. It shows on the face of the Trust Receipt that they advanced 90% of the manufacturer's cost?

A. Yes.

Q. At the time the papers were delivered to the Bank of America in Selma, at that time did they immediately withdraw funds and deposit them to the account of Miller Scraper Co.? A. Yes.

Q. At that time did the bank retain the Trust Receipts and attached documents? A. Yes.

Q. At that time you considered these articles floored? A. Yes.

Q. You considered that you held them as trustee for the bank? A. We did.

Q. Do you know Mr. Jess Forrest, manager of the Selma branch of the bank? A. Yes.

Q. Is he the one your company dealt with?

A. Yes.

Q. Going back to the scrapers, when the Miller employees unhooked these scrapers, what would happen if you or your son [16] or yourself discovered an imperfection in quality or workmanship?

A. We would call their attention to it and reject the scraper until it was adjusted.

Q. You would tell them you would not take it?

A. Not until it was made right.

Q. What happened then?

(Testimony of W. A. Reynolds.)

A. In some instances they returned them to the factory and made the proper adjustments.

Q. In some instances they completely tore them down and ran them through the assembly line again? A. Yes.

Q. And after they were adjusted they were returned to you? A. Yes.

Q. At which time you filled out the Trust Receipts? A. Yes.

Q. During the period of time covered by the contract you took all the scrapers manufactured by this company? A. Yes.

Q. This contract ended in December, 1953 between your company and Miller Scraper & Manufacturing Co.? A. Yes.

Q. All of the scrapers listed by serial number on the Order to Show Cause in these proceedings were manufactured prior to December, 1953?

A. Right.

Q. They all appear on the Trust Receipts?

A. Right.

Q. And all were identified by you or your son by serial number before they were put on Trust Receipts? A. Yes.

Q. You have within the last day or two visited the premises of Miller Scraper? A. Yes. [17]

Q. You counted and otherwise identified the scrapers there? A. Yes.

Q. What other articles, if any, were manufactured by Miller Scraper & Mfg. Co. during this time?

(Testimony of W. A. Reynolds.)

A. They manufactured a green feed wagon.

Q. A green feed wagon? How many did they manufacture?

A. To my knowledge—that is a hard question—I think about six.

Q. Just a small number during this entire period of time?

A. I am judging on the amount in and around the vicinity of the factory.

Q. At all times were the scrapers delivered over to you by Miller kept segregated from all other machinery of all types, including wagons?

A. Yes.

Q. Miller Scraper Co. also manufactured plows?

A. Yes.

Q. Consolidated Distributors also purchased a few of these plows? A. We purchased seven.

Q. Were these plows turned over to you on the Consolidated premises? A. Yes.

Q. Where were these placed?

A. Most of them were shipped directly out to various dealers throughout the United States. I believe we kept two there for a short time close to our office.

Q. As a matter of fact, at all times these few plows were kept right by your office? A. Yes.

Q. The Model A scraper is small?

A. Two yards. [18]

Q. Do you have any knowledge of the dead weight of that scraper?

A. I can't tell you exactly.

(Testimony of W. A. Reynolds.)

Q. The gross weight? Do you know the gross weight? A. About 4,270 pounds.

Q. The Model B scraper is a 3 yard scraper, is it not?

A. No, the Model B is a 6½ yard scraper.

Q. What is the gross weight of the Model B scraper? A. 13,210 pounds.

Q. Miller Model C scraper is a 3 yard scraper?

A. Yes.

Q. What is its gross weight?

A. 6,940 pounds.

Q. And the Model D scraper is a 4½ yard scraper? A. Yes.

Q. What is the weight of that scraper?

A. 8,700 pounds.

Q. Was it the 6½ yard Model B scraper that had no wheel on the front? A. No.

Q. Which one—which model had no wheel on the front?

A. A 10 yard scraper, made under special order and a 6 and a 6½ yard scraper made under special order. When they were ordered they were ordered less the front dollies.

Q. Were some of the scrapers turned over to you without front dollies?

A. Yes, the 10 cubic yard scrapers.

Q. And what is the gross weight of those 10 yard scrapers? A. 18,750 pounds.

Q. At the time you wanted to move the smaller scrapers, you would pull them with another vehicle?

A. Right.

(Testimony of W. A. Reynolds.)

Q. What kind of vehicle did you pull these scrapers with? [19] A. A jeep.

Q. A jeep is a 4-wheel traction vehicle?

A. Right.

Q. What sign, if any, was on that jeep?

A. Consolidated Distributors, Inc.

Q. Consolidated Distributors, Inc. was painted on the side of the jeep?

A. It was painted on a sign and placed on the side of the jeep.

Q. And you would use the jeep to pull small scrapers around? A. Yes. That is right.

Q. Could you pull any of the larger size scrapers with the jeep? A. No.

Q. How were the larger size scrapers moved?

A. With a large truck, we moved them with a large truck.

Q. Did you have a large truck? A. No.

Q. Did you contract for that service?

A. Yes.

Q. With whom did you contract for such service?

A. Owl Transfer and on heavy equipment Fortier Transportation.

Q. Did these people come in with heavy equipment and move whatever you wanted moved?

A. Yes.

Q. Whenever you would move this equipment onto the highway did you have to have a permit?

A. Yes.

Q. Did you ever obtain a permit to move this equipment? A. Yes.

(Testimony of W. A. Reynolds.)

Q. From what office did you obtain these permits? From the Highway Patrol Office?

A. From the office of the State Highway Patrol in Fresno, and [20] whenever the occasion occurred we had to go onto the County road with equipment, we got a permit from the County Highway Office.

Q. The main highway bounds the premises on the North side?

A. The county road is on the North side, when we wanted to use that we had to get a county permit.

Q. Then using the county road was the only direct way to Highway 99? A. Yes.

Q. And to go out on Highway 99 you would have to get a permit from the California Highway Patrol? A. Yes.

Q. Getting back to the scrapers—you have information concerning their dimensions?

A. Yes.

Q. You have the specifications before you?

A. Yes.

Q. What is the width of these various type scrapers?

A. The width of the Model A is 6 feet 11 inches. The model C is 7 feet 10 inches and the Model D is 7 feet 11 inches. The Model B is 10 feet 6 inches and the Model E, or 10 cubic yard scraper, the large one, is 10 feet 10 inches wide.

Q. That is the width of the scrapers?

A. Yes.

Q. What is the height of the various scrapers?

(Testimony of W. A. Reynolds.)

A. The Model A is 4 feet 9 inches, the Model C is 5 feet high, the Model D is 6 feet 6 inches, the Model B is 6 feet 10 inches, and the Model E is 8 feet high.

Q. All of these models are bulky, are they not?

A. Yes.

Q. All of them are substantially heavy and difficult to move, are they not? A. Yes. [21]

Q. Miller Scraper had a piece of automotive equipment on the premises, did they not?

A. Yes.

Q. This was a pick-up truck? A. Yes.

Q. Did it have Miller Scraper & Mfg. Co. painted on the side? A. Yes, I think it did.

Q. Was that pick-up ever parked in the area where the scrapers were parked? A. No.

Q. This pick-up was used for any particular purpose?

A. I could not testify as to that, definitely. I would see it out there, however, and I suppose it could have been used in making adjustments or otherwise.

Q. Did you ever see it parked by the scrapers?

A. No.

Q. Did you ever use the pick-up? A. No.

Q. You are positive on that? A. Yes.

Q. I understand some of the scrapers were taken out for demonstration purposes? A. Yes.

Q. What was the procedure on that?

A. If we need a scraper for demonstration purposes we would contact Mr. Forrest at the bank

(Testimony of W. A. Reynolds.)

and if we received his permission, we would remove the scraper for a few hours and demonstrate it and then bring it back to our lot.

Q. Did you ask permission of Miller Scraper?

A. No.

Q. You always asked permission of the bank?

A. Yes.

Q. Was Consolidated Distributors taxed for personal property tax on these scrapers? A. Yes.

Q. Did you pay the tax? A. Yes. [22]

Q. Did Consolidated Distributors procure insurance policies protecting these scrapers against fire and theft and so forth? A. Yes, we did.

Q. These policies insured both Consolidated Distributors and the Bank of America? A. Right.

Q. I will show you an insurance policy and ask you to identify it.

A. Yes—that is a Marine Insurance Co. policy.

Q. This policy is a Marine Insurance Company of New York policy, No. 406841? A. Yes.

Q. In the right hand corner is designated Consolidated Distributors, Inc. and Insurance Agency? A. Correct.

Q. Do you see the date of issuance, August 14, 1952? A. Yes.

Q. On the endorsement attached to the policy it describes the insured property as Miller Rotary Scrapers agricultural equipment for farming. Do you see that? A. Yes.

Q. These are the same rotary scrapers you testified about this morning? A. Yes.

(Testimony of W. A. Reynolds.)

Q. The same scrapers as shown on the Trust Receipts? A. Yes.

Q. Did you insure all the scrapers?

A. Yes.

Q. You insured the ones on the Trust Receipts, together with all others that were manufactured and received by you? A. Yes.

Mr. Barrett: Your Honor, can this be received in evidence next in order?

The Court: Just one document? [23]

Mr. Barrett: Just one document, your Honor, with records attached.

The Court: It will be received in evidence as Exhibit C for Consolidated Distributors. You may examine, Mr. Thompson.

Mr. Thompson: Mr. Reynolds, I believe you said Consolidated Distributors paid \$50 per month rental for the part of the office that they used?

A. Yes.

Q. Who did you pay the rent to?

A. Ray Miller or Kenneth Miller.

Q. Did you give them a check each month or transfer credits on your invoices?

A. We paid by check.

Q. What portion did you rent, what portion of the building?

A. The east office of the building.

Q. Where did the sign Consolidated Distributors, Inc. appear?

A. We had a sign on the glass of the door going into the office.

(Testimony of W. A. Reynolds.)

Q. How large was this sign?

A. About 24 by 24 inches.

Q. How large were the letters in your name?

A. About 3 inches high, in capital letters.

Q. Did you have any sign on the outside of the building?

A. We had a sign on the front of the building that said Consolidated Distributors, Inc.

Q. On the front of the office building?

A. Yes.

Q. Is the sign still there? A. No.

Q. When was it removed?

A. I can't tell you.

Q. About how long ago, can you remember?

A. Oh, since June in 1953, to my knowledge.

Q. You have never seen that sign since June, 1953? A. No.

Q. Do you know who removed it? A. No.

Q. Is the lettering still on the glass door leading to the office? A. No.

Q. When was it removed? A. I can't say.

Q. How long was it there?

A. Since June 1, 1953.

Q. In other words, since June 1, 1953 as far as you know, there has been nothing on the door or no sign on the outside indicating that Consolidated Distributors, Inc. had offices there? A. Right.

Q. There is nothing on any other part of the premises indicating that Consolidated Distributors, Inc. had any interest in the premises?

A. Right.

(Testimony of W. A. Reynolds.)

Q. Are the scrapers still in the same location that they were at the time of the bankruptcy?

A. I can't answer that.

Q. Haven't you been down there recently?

A. Yes.

Q. Did they appear to be in the same general location?

A. They have been moved from time to time to cut weeds.

Q. Do they occupy the same general portion of the premises? A. Yes. I think so.

Q. That portion of the premises is located about 150 feet south of the office building?

A. I would not say it was quite that far.

Q. Would you say these scrapers are 100 feet south of the office building? A. Probably. [25]

Q. Are there other scrapers further south in a row? A. Yes.

Q. And the last scraper is about 250 feet south of the office building? A. Yes.

Q. Between the office building and the first row of scrapers there are a few shacks, are there not?

A. No.

Q. Isn't there a garage and some type of shed there? A. There is the paint building.

Q. Aren't there a few other items there—a few trailers located between the scrapers and the buildings?

A. I don't believe so. There is a loading hoist.

Q. Are there not some feed wagons located there? Between the scrapers and the paint shed?

(Testimony of W. A. Reynolds.)

A. No.

Q. I will show you this picture and ask you whether or not it indicates what was in between the scrapers and the paint shed that you refer to.

Objection by Mr. Barrett. Objection overruled.

Q. I am referring to the items that were on the premises at the time the bankrupt was adjudicated.

A. I could not honestly testify because I did not inspect the premises at that time.

Q. Is it your testimony that you don't know where the scrapers were located at the time Miller Scraper Co. was adjudicated a bankrupt?

A. Yes.

Q. You will testify as to the location of the scrapers as of June, 1953? A. Yes.

Q. But not as to their location since that time.

A. No. [26]

Q. Now, Consolidated Distributors had no lease on any other part of the premises other than their portion of the office?

A. Just what is designated in our contract with Miller Scraper.

Q. In other words, you are referring to the portion of your contract authorizing you to have a storage yard on the Miller premises—paragraph 3 of the agreement? A. That is right.

Q. In other words, all your testimony refers to the period prior to June, 1953? A. Right.

Q. You have no knowledge of the situation physically, or otherwise at the plant?

A. I don't understand. I was not at Consoli-

(Testimony of W. A. Reynolds.)

dated Distributors until December. My son or Mr. Axman or some other employee made the inspection at the factory and as to the physical location of the equipment which was inspected.

Q. As I understand it, you don't know where this equipment was located after June, 1953? You don't know on what particular portion of the ground, the one-fourth acre, these scrapers were located. You don't know whether there were one or two lines of scrapers, or whether they were back of the building or on the east side—just that they were on the ground. You don't know where they were located or what else was located on the ground at the time Miller Scraper was adjudicated bankrupt?

Mr. Barrett: What was that date?

The Court: I don't know what line of demarcation is being drawn—the case was filed on August 2, 1954.

Mr. Bechtel: Usually the adjudication order is made on the same day. [27]

Mr. Barrett: It seems to me that there is no significance in the date of filing or in the date of the adjudication.

The Court: Except with relation to testimony.

Mr. Barrett: Section 3440 of the Civil Code as to delivery is the sole thing that we are concerned with.

Mr. Thompson: You don't know where the scrapers were located or what else was there on the premises as of August 2, 1954? A. No.

(Testimony of W. A. Reynolds.)

Q. You don't know where they were located or anything else there was located at any other time during 1954? A. No.

Q. You state that sometimes these scrapers were brought out to your storage yard and stored and sometimes they were in a defective condition?

A. Yes.

Q. And you did not accept delivery of the scrapers if they were in a defective condition?

A. We refused them.

Q. And usually Miller would send out a new one to replace the defective one until it could be repaired? A. Yes, if the defect was minor.

Q. If the defect was minor, and the repair was made, you accepted the scraper? A. Yes.

Q. How many days did it take to make minor repairs?

A. That is hard to say. If we discovered that some of the working parts on a scraper were unacceptable, we would ask them to replace these parts and this was done immediately and then we would accept the scrapers. If it was more serious, the scrapers were pulled off the yard and returned to the factory [28] and this took more time. Sometimes if parts were defective and had to be sent for, replacements had to be sent for, then it took more time. But minor repairs could be made immediately.

Q. How many days elapsed on the average in making minor repairs? A. I don't understand.

(Testimony of W. A. Reynolds.)

Q. You said most minor repairs could be made in a short time.

A. I said most minor repairs could be made on the spot.

Q. How long a time usually elapsed between the time you discovered defects and asked for repairs and repairs were actually made?

A. A few hours.

Q. Did you always discover the defects immediately, or sometimes a week or two later?

A. We did not discover some until after they were put in the field.

Q. And you discovered some defects after they had been sitting in the yard a few days?

A. Yes.

Q. And you would have them come out and take care of the repairs? A. Yes.

Q. So, on some occasions repairs would be made several days after delivery? A. Yes.

Q. And these repairs were made immediately?

A. Anything of a minor nature that could have been attended to was attended to there, on the spot.

Q. Is it true that on the main building of the yard the name Miller Scraper & Mfg. Co. appeared in lettering 3 or feet high? A. Yes. [29]

Q. And that name appeared on the north and east sides and on the top of the building?

A. Yes.

Q. Therefore, anyone driving onto the premises, the only name that he could see would be Miller Scraper & Mfg. Co.? The only name that was visi-

(Testimony of W. A. Reynolds.)

ble to any person driving into the premises was the name Miller Scraper & Mfg. Co.? Is that right?

Objection by Mr. Barrett—Overruled.

A. If a person was looking for the Miller factory, that would be the sign he would see. Miller has his factory well lettered.

Q. Miller had these large signs even before June, 1953 when you said you had small lettering on the door of your office in the building on the northeast corner of the premises? A. Yes.

Q. Now these scrapers, they could be hooked onto a truck or tractor and pulled down the highway on inflated tires?

A. Yes. Except the large scraper, the 10½ yard scraper.

Q. The 10½ cubic yard scraper required a special conveyance? A. Yes.

Q. But it could be pulled down the road?

A. Yes.

Q. When the tires went flat on the scrapers you pumped them up?

A. When they would go flat we would immediately ask the factory to inspect them and make adjustments.

Q. Aren't there quite a few scrapers out there with flat tires now that have been flat a long time?

A. No, I did not notice any.

Mr. Bechtel: You say you didn't notice any flat tires—are you referring to your visit of yesterday?

A. I was unable to see any tires that were flat yesterday.

(Testimony of W. A. Reynolds.)

Mr. Thompson: I believe that is all.

Mr. Barrett: With respect to the signs, you testified you and Miller Scraper shared the same building for offices? A. Yes.

Q. On the outside of this office building there were lettered signs which contained both your name and Miller Scraper & Mfg. Co.? A. Yes.

Q. Were these signs both the same size?

A. I believe they were.

Q. They were both located over the front entry?

A. Yes.

Q. They, both you and Miller, had signs on the inside of the offices, over the doorway, that was visible only from the waiting room? A. Yes.

Q. And on the outside the names of both companies were equally visible? A. Right.

Q. Miller Scraper & Mfg. Co. and Consolidated Distributors, Inc. occupied the same size office space? A. Yes.

Q. A person who had business with the management of Miller Scraper came through this front doorway of the office building to see their office manager? A. Yes.

Q. And, similarly, anyone who had business with you came through that same door? A. Right.

Q. And office business was distinct from factory business? A. Yes.

Q. Under the terms of your agreement with Miller Scraper they guaranteed their articles to be free from imperfections? A. Yes. [31]

(Testimony of W. A. Reynolds.)

Q. They guaranteed the full article—workmanship and materials?

A. Yes. I think that would be true in any organization.

Q. You left the premises on or about June of last year? A. Yes.

Q. And you have been back since, periodically?

A. Right.

Q. And all of the articles with which we are concerned here were delivered before you left?

A. Yes.

Could I correct that? They were made before September 1st of 1953, at least.

Q. Who was there to inspect them in your absence?

A. My son or one of the other employees.

Q. And all the time you were there you paid rent to Ray Miller? A. Usually.

Q. He was vice-president and office manager?

A. Yes.

Mr. Barrett: That is all.

Mr. Bechtel: Mr. Reynolds, I will show you the Trust Receipts which are in evidence on behalf of Bank of America, Numbers A to E inclusive. On the bottom of these Trust Receipts appear various dates from January 5, 1953 to May 2, 1953. These are the dates, are they not, that the scrapers were delivered to Consolidated Distributors?

A. Yes. They were usually delivered the day the invoice was received.

Q. It would be true then that the scrapers de-

(Testimony of W. A. Reynolds.)

scribed in these Trust Receipts were delivered to Consolidated Distributors subsequent to the last date appearing thereon or the 2nd of May, [32] 1953? A. Right.

Mr. Thompson: I want to show you, Mr. Reynolds, this picture. Imagine you are standing just south of the main building, looking south. Does that show the scrapers as they are now located down there?

A. They are in that general vicinity, maybe a little further toward Manning Avenue. It is hard to judge from the position we are standing in. They could be in that near vicinity.

Q. Then you don't know exactly where they are located? A. No. Not exactly.

The Court: You say you paid \$50 a month rent for the office? A. Yes.

Q. Did Consolidated Distributors, Inc. pay Miller Scraper and Mfg. Co. any other rent at all?

A. No, sir. We had an understanding in our contract. It was part of our agreement.

Q. As I understand it, you testified that these scrapers are stored in a lot which lot runs more or less generally north and south, extending about 150 feet north of the office and approximately 250 feet south of the office? A. Yes.

Q. And the lot on which these scrapers is stored is about 100 feet wide? A. Yes.

Q. Are there any other articles stored in the vicinity of these scrapers now? A. No.

Q. Was there any other articles stored there in June?

(Testimony of W. A. Reynolds.)

A. Our scrapers were kept separate from anything that Miller owned. [33]

Q. Were all of the scrapers involved on those invoices stored in that lot?

A. All, except sometimes 1 or 2. When we had a new scraper we would sometimes set it up near our office on a show floor. We made some improvements where we could set up a scraper right at the side of our office or around the front so that we could display them.

Q. I was out at the premises a day or two after the petition was filed. There was a row of scrapers lined up near the highway, and then another row of equipment and various types of implements. The factory yard was just to the south, if Manning Avenue runs east and west.

A. It is to the south of the building and south of our scrapers.

Q. How about to the west of your row of scrapers?

A. That would take you to the paint shop, a little space where paints and so forth are stored. We kept our scrapers clear to the back of the lot and south as far as we could.

Q. Which direction was the lot from the office?

A. To the east.

Q. That would be 250 or 300 feet from the office?

A. Yes.

Mr. Thompson: The witness apparently assumes that Highway 99 runs east and west.

Mr. Reynolds: I am judging from Manning

(Testimony of W. A. Reynolds.)

Avenue. When the scrapers were re-arranged from time to time because the bank asked us to keep them in shape and send our inventory in when [34] we sold scrapers and I would have to move them from one place to another. When we sold scrapers we would have to move other scrapers to straighten the line. We would have to get the line back together.

(Noon recess was called at 12:10 p.m.) [35]

The above-entitled matter came on regularly for continued hearing on the 14th day of October, 1954, commencing at the hour of 1:30.

Mr. Thompson: If the Court please, to save time and so that the future witnesses can refer to these pictures, if they wish I would like to offer them into evidence, the pictures which I took, about, say two and four weeks after August 2, 1954. This group which I want to offer as a group was taken from a point on the railroad track about, I would say, about half way down the property and was taken first facing towards the southernmost portion of the property, and the next picture was taken of the area further north to take in all of the property and I would like to number them accordingly number one, two, three, four, five, and six.

The Referee: This is the first group that the Trustee has [1]* introduced in evidence. Any other evidence?

Mr. Thompson: No, sir.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

The Referee: They will be received in evidence as exhibits one, two, three, four, five, and six each for identification only. Any objection?

Mr. Barrett: We have no objection to the exhibits being received for identification and so marked.

Mr. Bechtel: I have no objection to their being so marked.

Mr. Thompson: Maybe they can be one-A, one-B, and one-C, and these other pictures can be two and three because they are all panorama in sequence.

The Referee: They have been received and I have already entered them as one, two, three, four, five, and six.

Mr. Thompson: I have a picture here which was taken from approximately the corner of Manning Avenue and the railroad track facing southeast towards the plant which I would like to offer as a Trustee's Exhibit for identification number seven, and I have a picture which was taken from the inside of the manufacturing plant, in other words, east of the wing that runs north and south, and south of the wing that runs east and west and taken from an elevation of about nine or ten feet facing south by southeast towards the scrapers which are located on the premises. I would like to offer it as Trustee's Exhibit Number Eight for identification.

Mr. Barrett: What date was it that you took the pictures?

Mr. Thompson: Well, it was, the date was about two to four weeks [2] after August the 2nd.

Mr. Barrett: Of this year, and you took the pictures yourself?

Mr. Thompson: I took the pictures myself.

The Referee: The photograph offered as Exhibit Seven will be received as Trustee's Exhibit Seven for identification only and the photograph offered as Trustee's Exhibit Eight for identification only will be so received.

Mr. Barrett: Shall I call the next witness, your Honor?

The Referee: Yes.

Mr. Barrett: Mr. James Reynolds, please.

JAMES REYNOLDS

Being first duly sworn, testified as follows:

Mr. Barrett: Will you state your full name, sir?

A. James R. Reynolds.

Q. And you are residing in Fresno?

A. Yes, sir.

Q. And what is your address?

A. 1829 Harvard.

Q. In 1952 were you employed by the Consolidated Distributors, Inc.?

A. Yes, sir, in the latter half of 1952.

Q. You were working there with your father in the office, weren't you? A. Yes, sir.

Q. Calling your attention first to the office. This office that was occupied by Consolidated Distributors Inc., was a wing of it also occupied by Miller Scraper Manufacturing Company?

A. Yes, sir. [3]

Q. On the outside, on the front of this building,

(Testimony of James Reynolds.)

on the Manning Avenue side, was a little porch, wasn't there?

A. Yes, sir.

Q. And on it leading into the front door do you recall a sign?

A. Yes, sir.

Q. And what does that sign say?

A. It says the offices of the Consolidated Distributors Inc. and the Miller Scraper and Manufacturing Company.

Q. And that was visible?

A. Yes, sir, it was a printed sign.

Q. Did the two companies occupy respective wings of the building in which they were tenants, is that correct?

A. Yes, sir, separate wings.

Q. And your father was in charge of the office of the Consolidated, is that true?

A. Yes, sir.

Q. And what was your capacity there?

A. I was his assistant.

Q. And, you too, occupied it during business hours?

A. Yes, sir.

Q. And whatever you were called upon to do for Consolidated you did in those offices?

A. Yes, sir, it was conducted in those offices.

Q. I will show you on behalf of the Bank of America these five documents, is that your signature, James R. Reynolds?

A. Yes, sir.

Q. And at the bottom of each of these exhibits?

A. Yes, sir, it is.

Q. Just for point of reference in the record, these are Exhibits A, B, C, D, and F of the Bank of America in these proceedings. Now, Mr. Reyn-

(Testimony of James Reynolds.)

olds, the Consolidated Distributors Inc., and Miller Scraper and Manufacturing Company have an agreement in writing between them governing their relationship during that period of time, is that correct?

A. Yes, sir.

Q. Under which agreement the Miller Scraper and Manufacturing Company—

Mr. Thompson: I object to that as leading and suggestive and asking for the conclusion of the witness.

Mr. Barrett: I will withdraw it.

Mr. Thompson: The written document speaks for itself.

Q. (By Mr. Barrett): There is a paint shed back there, isn't there? A. Yes, sir.

Q. With respect to the location of the office and the location of the manufacturing plant itself, where is this paint shed?

A. It is approximately to the southwest of the office building and to the east and south of the manufacturing plant.

Q. It is approximately equidistant between the two, isn't it?

A. Approximately, yes sir.

Q. And the scrapers were some distance in a southerly direction from it? A. Yes, sir.

Q. And the last action was painting in the shed, wasn't it? [5]

A. Yes, sir, the scrapers were stored there until they were pulled from the paint shop.

(Testimony of James Reynolds.)

Q. And, then what happened to them?

A. They were pulled out of the paint shop to an area where they were stored for shipment.

Q. Will you describe to us the location of this storage area of which you speak?

A. The storage area was south of the office building and to the east of the paint shop, lying almost on the easterly side of the property line.

Q. And then Miller Scraper and Manufacturing Company personnel pulled the scrapers out of the paint shop into the storage area?

A. Yes, sir.

Q. What did they use for that purpose?

A. A tractor.

Q. And in what manner did they arrange these scrapers?

A. They were arranged according to their size and according to their model.

Q. In other words, the Miller Scraper and Manufacturing Company manufactured scrapers of different sizes, did they not?

A. Yes, sir.

Q. Designated by different letters and model numbers and they were arranged, of course, according to the grouping of sizes?

A. Yes, sir.

Q. And were they arranged in rows?

A. Yes, sir. They were arranged in rows.

Q. Now, did Miller Scraper and Manufacturing Company put any [6] other equipment in this storage area?

A. No, not within that immediate area.

Q. None of their own equipment of any kind went into that area, is that not true?

(Testimony of James Reynolds.)

A. Yes, sir, it is true.

Q. Now, with respect to the storage area, approximately how large is it?

A. Approximately one acre.

Q. Do you know how large, approximately, the entire premises are? A. Four acres.

Q. Were these scrapers moved from time to time and, if so, for what purpose and in what manner?

A. They were relined in their size groupings. As the units were moved for shipment they were moved out so that the weeds can be kept down as they grew up around the machines.

Q. So their groupings would be rearranged in there from time to time? A. Yes, sir.

Q. Who did that work?

A. As a rule it was done by Mr. Miller's men on his tractors.

Q. Will you state what happened at the time these scrapers would be pulled out individually from the shed in which they were painted, and parked in the storage area? What happened from that point on?

A. They were inspected and the serial numbers recorded and checked.

Q. Did you do that work? A. Yes, sir.

Q. As well as the others in your organization?

A. Yes, sir.

Q. Now, with respect to what you did with those documents [7] that we previously identified as Trust Receipts, did you check the scrapers listed

(Testimony of James Reynolds.)

on those Trust Receipts? A. Yes, sir.

Q. They are inspected and signed by you, is that correct? A. Yes, sir.

Q. Did you check the identifying marks and put it on those documents? A. Yes, sir.

Q. Would you look at those documents, please, did you fill out that document? A. Yes, sir.

Q. And then you will notice attached to each one of the exhibits previously mentioned as being Trust Receipts, there is an invoice, is there not?

A. Yes, sir.

Q. From the Miller Scraper and Manufacturing Company? A. Yes, sir.

Q. Would you tell us in what manner those invoices were received?

A. They were received by us on the 15th, the 1st and the 15th of each month, based upon the production in that period of time.

Q. They contain a summary, do they not, of the merchandise that was pulled out of that shed into the storage yard in the interim? A. Yes, sir.

Q. And were they by you or by anyone in your direction—— A. Yes, sir.

Q. Attached to the Trust Receipts itself?

A. Yes, sir.

Q. And then what did you do with those documents? [8]

A. I took the Trust Receipts and the invoices from the Miller Scraper and Manufacturing Company to the Bank of America, the Selma Branch Bank.

(Testimony of James Reynolds.)

Q. You did that personally in most cases?

A. Yes, sir.

Q. Specifically, with respect to each of the documents you have before you, being Exhibits A through E for the Bank of America, did you specifically take those documents to Mr. Forrest of the Bank of America?

A. To the best of my knowledge, yes, sir.

Q. And what happened when you took them to the bank?

A. They were processed according to the agreement which we had with the bank.

Q. Would you tell us what happened to them?

A. Ninety percent of the invoices or the amount of the trust receipts were credited to Miller's account, and, of course, we were responsible for the liability of it.

Q. Now, Miller Scraper and Manufacturing Company had their bank account at that bank, did they not?

A. Yes, sir.

Q. And the bank would take the proceeds of the trust receipts and put it in the Miller bank account, is that your testimony?

A. Yes, sir.

Q. Has all of the money, the list price for all of the scrapers listed in those trust receipts, been paid by the Bank of America to Miller, to your knowledge?

A. Yes, sir.

Q. So that all of those articles, the scrapers, have been [9] completely paid for, have they not?

A. Yes, sir.

Q. Now, thereafter when you wished to move one

(Testimony of James Reynolds.)

of those articles other than for a cash sale, did you obtain permission from Miller?

Mr. Thompson: I object, your Honor, on the grounds it is misleading.

Mr. Barrett: I don't think so because that is preliminary.

The Referee: I think the objection is good.

Mr. Barrett: All right, supposing you wanted to move one of those scrapers for other than a cash sale price, what procedure would you go through?

A. We had to get permission from the Bank of America, particularly, from Mr. Forrest, the manager of the Selma Branch, to remove them from the premises where they were stored under the Trust Receipts.

Q. Did you at any time obtain permission from anyone else? A. No, sir.

Q. From any other persons, firms, or corporations? A. No, sir.

Q. Did you ever ask permission from Miller to ever do so? A. No, sir.

Q. Did anyone from Miller Scraper and Manufacturing Company, as its servant or otherwise, ever claim any right to exercise—

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness.

Mr. Barrett: All right, I will withdraw my question.

Q. Did Miller have any contact with those [10] machines after they were left on the lot?

(Testimony of James Reynolds.)

A. On some occasions, yes, sir.

Q. Just what contact would Miller's organization have?

A. Well, after they were left on the lot, in the event there was a defect which became noticeable or which was found during the inspection of the machine, of course, they fixed them, and there were some occasions when they were repaired right on the lot.

Q. At the time they were received on the lot, were they inspected? A. Yes, sir.

Q. What was the procedure in case something was found wrong with them at that time?

A. The proper procedure was that they were asked to repair them, and the scrapers—the scrapers were not received for payment until they were rectified.

Q. Did you at anytime obtain payment on the scraper before the defect was remedied?

A. No, not knowingly.

Q. Do you recall any instances in which Miller fixed any part of those scrapers—mechanical imperfections—after the bank had paid over the funds? A. Yes, sir.

Q. How many at this time would you say?

A. Very rarely, I couldn't give any number.

Q. What was the circumstance in the cases that would arise?

A. At one time a tire went down, or a tire was found to have a leak caused when it was mounted

(Testimony of James Reynolds.)

which didn't show up for several days after the scraper was set on the lot, which was repaired.

Q. Was there any rusting during foul weather?

A. Yes, sir.

Q. Was that ever checked by the Miller people?

A. Yes, sir.

Q. To what extent did this kind of repair involve repair equipment, in what manner would Miller repair these things, by manual labor, or what?

A. Yes, sir, manual labor.

Q. Miller had some automotive equipment, didn't he?

A. Yes, sir.

Q. Owned by the corporation?

A. Yes, sir.

Q. It was a corporation at that time, wasn't it?

A. I don't know.

Q. Did Miller have a pick-up truck with his name on it?

A. Yes, sir.

Q. Was that pick-up truck ever used in this parking area or storage area?

A. Not for a sustained length of time, no, sir.

Q. What was the nature of the ground in this area, very loose, sandy?

A. Yes, sir, very loose and sandy.

Q. Did you ever see Miller's truck parked there for any considerable length of time?

A. No, sir.

Q. Did you ever know of any instance when it was left there overnight by some employee of Miller's organization?

A. Not that I recall.

Q. The Consolidated Distributors Incorporated had a jeep, didn't they?

A. Yes, sir.

(Testimony of James Reynolds.)

Q. Would you describe that jeep and any lettering on it, if any? [12]

A. Well, the jeep was painted orange and there was a tin sign attached to it with Consolidated Distributors Inc. painted on it with our address and telephone number.

Q. About what height were the letters on that sign—"Consolidated Distributors Inc."?

A. "Consolidated Distributors Inc.", I would say approximately six inches.

Q. To what degree was this jeep used in the storage area?

A. Well, it was left in the storage area when it wasn't being used for demonstration purposes.

Q. You speak of demonstration purposes, was it being used to pull out one of those scrapers?

A. Yes, sir.

Q. What size scraper? A. Model A2.

Q. Now, with respect to other equipment manufactured by Miller, was any other equipment of any other kind or nature stored in this area?

A. No, sir.

Q. Some time after this contract relationship between Miller Scraper and Manufacturing Company and Consolidated Distributors Inc. came to an end Miller began to market his products himself, didn't he? A. Yes, sir.

Q. About what time, was that—month and year?

A. I think it began in September 1953, and the final termination, the legal termination, was December.

(Testimony of James Reynolds.)

Q. Now, Miller manufactured a very small volume of scrapers in that period of time, didn't he?

A. As far as I know, yes, sir. [13]

Q. With respect to what happened to those scrapers, were any of Miller's scrapers, any of his products, ever situated on the storage lot?

Mr. Thompson: Well, I object just to the form of the question because it calls for the opinion and conclusion of the witness on this storage lot. There is no evidence that this property is segregated from any other property that belonged to Mr. Miller.

Mr. Barrett: Well, Counsel is simply arguing the legal effect of the language used by the witness. Now, that is for the Court to decide.

Mr. Thompson: The Counsel refers to this storage lot——

Mr. Barrett: I am using the language of the witness and of the agreement.

Mr. Thompson: As to the separate storage lot, there is no segregation in any way or otherwise segregated from the rest of it.

The Referee: Objection overruled.

Mr. Barrett: Just for the record—in this agreement there is a storage space which was bargained for, and these witnesses in fact used it for that purpose. Do you have the question in mind now?

Mr. Reynolds: I would like to have the original question repeated.

Mr. Barrett: May I reask the question?

The Referee: Yes.

Q. (By Mr. Barrett): When Miller produced

(Testimony of James Reynolds.)

scrapers for his own account, [14] where were those scrapers located on the premises?

A. As far as I know they were located adjacent to the manufacturing building.

Q. There is a triangular piece in front of the Miller plant? A. Yes, sir.

Q. Did Miller, to your knowledge, store anything there?

A. Yes, sir. Scrapers were stored there.

Q. Yours? A. No, sir.

Q. Were any referred to in your testimony stored there? A. Not to my knowledge.

Q. You have never seen them there?

A. No, sir.

Q. Now, we received notice that bankruptcy was filed some time in 1954, what were on the premises at that time?

A. I don't know, I did not visit the premises at that time.

Q. All of the scrapers that were covered by the Trust Receipts, and which are claimed as the property of Consolidated Distributors Inc. by the bank, were delivered prior to July of 1953?

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness with the word "delivered".

Mr. Barrett: All right, strike it.

Q. Let's say, "left" in the parking area to which you have referred in your testimony?

A. Yes, sir.

Q. Is that correct? A. Yes, sir. [15]

(Testimony of James Reynolds.)

Q. So that all of them were there while you were there on the premises, and you saw what happened and what took place, is that correct?

A. Yes, sir.

Q. Now, what has been done with them, and by whom, since then? A. I don't know.

Q. You are not qualified to state because you don't know, you have not been there, is that correct?

A. That is correct.

Q. Now referring to these scrapers, you have heard your father's testimony this morning?

A. Yes, sir.

Q. If I ask you the same questions, would you answer them the same way with respect to the weight and so forth? A. Yes.

Q. You saw your father referred to the specifications in writing? A. Yes, sir.

Q. And so I do not need take time to repeat the same questions? A. Yes, sir.

Q. Now, with respect to moving this equipment, when it was necessary to move the two-yard scrapers, what techniques were employed?

A. A truck was leased or hired for that purpose.

Q. And would the truck pull the scrapers?

A. Yes.

Q. And in the case of some of the larger types, was it necessary to load them into a trailer, were they all mobile enough to be pulled? A. Yes.

Q. Some of those scrapers had no front dollies, did they? A. That is correct. [16]

(Testimony of James Reynolds.)

Q. How would those types be removed?

A. By special trucking equipment.

Q. Would you describe the size of that equipment that was you say, "special", can you give us, as laymen, can you give us the size, the approximate size to move it?

A. Well, it would require a hoist or some sort of a boom which would be capable of handling eighteen thousand pounds of weight, and there are very few pieces of trucking equipment in the area which can handle such a machine as that.

Q. Now, Consolidated Distributors Inc. had no automotive equipment on the premises other than the jeep, is that correct? A. That is correct.

Q. When these articles had to be moved about you hired Owl Transfer, or some comparable transfer company to move them? A. Yes, sir.

Q. Who paid for that moving?

A. Consolidated Distributors Inc.

Q. Did Miller Scraper and Manufacturing Company or Corporation pay for that moving about?

A. No, sir.

Q. Where was this jeep to which you referred in your testimony, parked at night?

A. If it was attached to the demonstrating scraper, it was either parked out by the rest of the scrapers or out adjoining the east side of the office.

Q. And it was parked there customarily at night, other than during business hours, is that correct?

A. Yes, sir.

Q. That is all the questions for now.

(Testimony of James Reynolds.)

Q. (By Mr. Thompson): Have you, has Consolidated Distributors Inc., purchased any scrapers from Miller Scraper and Manufacturing Company since June of 1953? A. Not to my knowledge.

Q. And was the sign removed from the office door in front of the office in June of 1953, that is, the Consolidated Distributors Inc. sign?

A. It was removed after the month of June, 1953.

Q. How long after the month of June?

A. It was within thirty days.

Q. So all outward signs of Consolidated Distributors Inc. ever having been on the premises of Miller Scraper and Manufacturing Corporation were removed by July of 1953, is that right?

A. Yes, sir, all printed signs.

Q. Were there any other signs on the premises after July of 1953?

A. Yes, sir, our property, our merchandise.

Q. You mean there were some scrapers on the premises? A. Yes, sir.

Q. There was nothing then after July, 1953, that would indicate to anyone that Consolidated Distributors Inc. had any interest on the property after July, 1953, was there?

Mr. Barrett: Just a moment, I will have to object to that as calling for the opinion and the conclusion of the witness.

The Referee: Would indicate that they had any interest on the property? [18]

Mr. Thompson: Yes, by signs or otherwise.

(Testimony of James Reynolds.)

Q. Was there any way—I will withdraw that question. Did the name of Consolidated Distributors Inc. appear on the premises of Miller in any form after July of 1953?

A. Yes, on our demonstrator unit and on our jeep which was described.

Q. Was that parked there after July, 1953?

A. Yes, sir.

Q. Where?

A. With the rest of the scrapers.

Q. And the only place was on the jeep?

A. And on the demonstrator unit.

Q. Yes, and no place else? A. No, sir.

Q. And was there any member of Consolidated Distributors Inc. present on the premises after July, 1953? A. Yes, sir.

Q. Who? A. Myself.

Q. How many times a week, how many days did you spend there after July of 1953?

A. I would say I was on the premises on the average of three times a week.

Q. For how long? A. It varied.

Q. On an average, how many hours a week?

A. Probably fifteen or sixteen hours.

Q. Now, if someone would come during your absence and want a scraper, would some Miller employee show them the scrapers that were there?

A. Perhaps.

Q. And was that a regular practice, the arrangement you had with Miller to show them the scrapers whenever Consolidated [19] Distributors Inc. was

(Testimony of James Reynolds.)

not present? A. Yes, sir.

Q. In other words, ever since you entered into this agreement between Miller Scraper and Manufacturing Company and the Consolidated Distributors Inc., it was understood, I take it, between you and Miller Scraper Company, or if you weren't there, or if some other representative wasn't present, some employee of Miller Scraper would go out and show it to them?

A. No, there wasn't any demonstration involved.

Q. They would show the scrapers to them?

A. Yes, perhaps point out some of the engineering features.

Q. Or perhaps would it be in the course of good business for both of the parties involved, if they wanted to buy a scraper, they would take an order, would they not? A. No, sir.

Q. When was the last time that you regularly appeared or spent time at the premises?

A. November, 1953.

Q. And is that the last time anyone from Consolidated Distributors Inc. spent any time on the premises? A. No, sir.

Q. When was the last time anybody was working there?

A. I don't know. I haven't been employed by them since that time.

Q. Your agreement with the Miller Scraper and Manufacturing Company ended in December, terminated in December, 1953, to the best of my knowledge.

(Testimony of James Reynolds.)

The Court: I am a little bit confused on that point. I had June in mind. [20]

Mr. Barrett: It was in December, your Honor, that the agreement was ended officially. The production for all intent and purposes ended about June.

The Referee: They moved out of the office building about June?

Mr. Thompson: As I understand it, the signs were moved shortly after June or within thirty days after the first of June or thereabouts, and no further scrapers were purchased after that? Answer the question. A. Yes, sir.

Q. But you did come there two or three times a week and spent some time there after June until November? A. Yes, sir.

Q. Since December of 1953 has Consolidated Distributors Inc. ever made a demand upon Miller Scraper and Manufacturing Corporation for any of these scrapers?

A. I have not been employed by them since that time.

Q. Well, since June?

A. The scrapers in question?

Q. Yes.

A. Yes, we have shipped scrapers since June of 1953.

Q. When was the last scraper that you shipped?

A. I couldn't answer that question.

Q. It was in 1953?

(Testimony of James Reynolds.)

A. The last one that I had anything to do with was in 1953.

Q. Do you know of any since 1953?

A. No, sir.

Q. Now, you say scrapers have been removed to clean out weeds?

A. Yes, sir. [21]

Q. And Miller Scraper and Manufacturing Corporation would do that with their trucks?

A. Usually a tractor.

Q. And did they make any charge for that?

A. No, sir.

Q. Now, these scrapers would be produced, and, I would presume, come out of the paint shop at various times, would they not?

A. Yes, sir.

Q. And the employees immediately would move them over to the yard and park them?

A. Yes, sir.

Q. And they wouldn't stop their work and wash their hands and say, "We have got a scraper for you, and come down and get it," would they?

A. No, sir.

Q. They would just park it and later on you would go down to look at it?

A. Yes, sir.

Q. And isn't it true that several days would lapse before you would get around to checking the serial numbers?

A. No.

Q. Now, you received invoices twice a month, is that right?

A. Yes, sir.

Q. You are billed for the scrapers twice a month?

A. Yes, sir.

Q. Now, isn't it true that there was property

(Testimony of James Reynolds.)

belonging to Miller parked both south of your scrapers and north of your scrapers?

A. Yes, sir.

Q. In other words, down at the southern end of the scrapers, Mr. Miller had some dusting or spraying equipment parked there, did he not? [22]

A. On the south end?

Q. Yes.

A. As far as I know, there was just junk.

Q. Well, there was some on the property?

A. Yes, sir.

Q. And just north of your scrapers, and in between your scrapers and the paint shop, Miller Scraper and Manufacturing Company had some of these feed wagons parked, did he not?

A. They were parked between the paint shop and our office, and between the manufacturing plant and our plant and our office.

Q. And were they not also parked between the paint shop and your scrapers?

A. Now, there were some parked south of the scrapers.

Q. And isn't it true immediately west of your scrapers there was property belonging to Miller Scraper and Manufacturing Corporation?

A. Immediately west, you mean?

Q. Yes.

A. I would say that they were within twenty-five or thirty feet, yes.

Q. Yes, and there were no signs between the Miller Scraper Company property, and the scrap-

(Testimony of James Reynolds.)

ers, stating that this property belongs to Miller Scraper Company and this property belongs to Consolidated Distributors Inc.? A. No, sir.

Q. There were no signs whatsoever that would indicate who owned that property, was there?

A. No.

Q. So that if you were walking down from the paint shop, past the scrapers, and down to the feed wagons, there would be no signs to indicate as to who owned any of this property?

Mr. Barrett: I will object to that as leading and [23] suggestive and asking for the conclusion of the witness. He is asking a hypothetical question.

The Referee: No signs indicating ownership is what he is asking.

Mr. Barrett: I am objecting to the form of the question. He said, "If you do this——"

Mr. Thompson: I asked, "If you had walked when you were there down from the paint shop, down to these feed wagons, could you see, or were there any signs to see who the property belonged to".

The Referee: The question has been rephrased.

Mr. Barrett: I will still object to that question. Certainly as far as this witness is concerned it is calling for his conclusion.

The Referee: It may be calling for the conclusion of the witness, but as to whether or not there were any printed or any type of signs.

Mr. Barrett: I have no objection if it is understood in that light.

(Testimony of James Reynolds.)

The Referee: The question has been rephrased, and the objection is overruled.

Q. (By Mr. Thompson): In other words, isn't it a situation where there was line on the property there where there were scrapers, and there were feed wagons, and there were miscellaneous junk, and miscellaneous property located between it, just south of the paint shop, isn't that right?

A. Between the paint shop and the property line, south property line? [24]

Q. Yes, and there were no signs to indicate who owned any of this property?

Mr. Barrett: You mean lettered signs?

Mr. Thompson: A sign is a sign. I am talking about a sign with their names on it.

Mr. Barrett: Counsel, in your previous question you have defined signs as being indicia of ownership, as I recall it.

Mr. Thompson: The word "Consolidated" did not appear on any of this property, did it?

A. No.

Q. Now, I will show you Trustee's Exhibit Number Three for Identification, and ask you whether or not this building located in the extreme left of this exhibit is not the paint shop? A. Yes, sir.

Q. And in between them the paint shop and these tractors, isn't it true that there are located several feed trailers?

A. Well, this is on the very extreme side of the property, I believe.

Q. You understand this is the paint shop on

(Testimony of James Reynolds.)

the left side of the picture and the right-hand side is south of the paint shop?

Mr. Barrett: I wish to object to this as being improper cross examination, because if I were the witness here I would be at a loss as to what this picture shows because it is in no way related to his testimony. So, I object to this question as being improper cross examination.

The Referee: You asked about the location of the scrapers. And the feed wagons, also, as I recall the cross examination, are [25] indicated by the photographs.

Mr. Barrett: So, if I accept this picture which was taken three or four weeks after the bankruptcy, what does the picture prove?

The Referee: It may not prove anything if it does not show some feed wagons in it.

Mr. Bechtel: Wouldn't the picture speak for itself?

The Referee: It may be, but I think the witness can identify it.

Mr. Thompson: The picture is not in evidence.

Mr. Barrett: I will withdraw the objection.

Q. (By Mr. Thompson): Those are the feed wagons that you were referring to, and is it not true that those feed wagons were located there when you were on the premises?

A. No, they were not.

Q. Do you know where they were located?

A. I don't know.

Q. I will show you Trustee's Exhibit Number

(Testimony of James Reynolds.)

Eight for Identification, and ask you whether or not you can identify the property which is located on the extreme left portion of that just to the extreme left of the scrapers?

A. Yes, those are feed wagons.

Q. And you don't know whether or not they were there when you were last on the premises?

A. I know that they weren't there.

Q. (By Mr. Bechtel): You know they weren't there——

Q. (By Mr. Thompson): Do you believe that those feed wagons and [26] similar feed wagons are just to the south of the scrapers, is that right?

A. Yes, sir.

Q. I will show you Trustee's Exhibit Six for Identification, and ask you whether or not you recognize these, apparently spray rigs, at the extreme right in that picture?

A. I presume that is what they are.

Q. Were they parked in that location when you were last on the premises?

A. No, sir.

Q. When was the last time you were there?

A. November of 1953.

Q. You haven't been there since?

A. No, sir.

Q. Not within the last few days or weeks?

A. No, sir.

Q. Have you driven by there?

A. Yes, sir.

Q. Did you notice any of the scrapers?

A. I noticed the location of the scrapers, generally speaking.

Q. We are now referring to trustee's exhibit

(Testimony of James Reynolds.)

number eight. When you were last there, were the scrapers located at the same general area at that time? A. Yes, sir.

Q. And in that long line as they are located there? A. I think there were two.

Q. And was there miscellaneous property at the west of the scrapers as they are now in the picture?

A. Yes, sir.

Q. These scrapers were sold as Miller Scrapers, were they not? Under the trade name?

A. Yes, sir. [27]

Q. And they had the trade name "Miller Scraper and Manufacturing Company" on them, didn't they?

A. Yes, sir.

Q. Manufactured by the Miller Scraper and Manufacturing Company? A. Yes, sir.

Q. So that the Miller Scraper and Manufacturing Company appeared on all of these long line of scrapers, did they not? A. Yes, sir.

Q. And the name "Consolidated Distributors Inc." did not appear in any way?

Mr. Bechtel: They all appear to be manufactured by Miller Scraper and Manufacturing Company.

Mr. Thompson: As far as you know, your company has made no effort to remove these scrapers since November of 1953?

A. As far as I know they have not.

Q. Did the Miller Scraper and Manufacturing Company or Corporation ever assist in the delivery of these scrapers to a buyer? A. No, sir.

Q. Don't on occasion, a Miller Scraper employee

(Testimony of James Reynolds.)

take the scraper out behind a truck and show the purchaser how to use it? A. No, sir.

Q. And assist in delivery? A. No, sir.

Q. Who did make the delivery?

A. The dealer through whom the merchandise was sold.

Q. The dealer would come to the premises and get the scraper, then?

A. No, we would ship the scraper to the dealer by rail. [28]

Q. I believe that is all.

The Referee: Any other questions?

Mr. Barrett: May I ask just one to clear up a misunderstanding of the record.

Q. I have a form of these Trust Receipts previously introduced as exhibits of the Bank of America, would you take them please, the last date appearing on them is sometime in July of 1953.

The Referee: July?

Mr. Barrett: July.

The Referee: All right.

Mr. Bechtel: March was the due date?

Mr. Barrett: The date that I have been looking at, at the bottom of the exhibit, is the date that the payments were due, is that correct?

A. This is the date when they were executed, and this is the date when they were due (pointing to exhibit).

Q. And down at the bottom appears the date of execution and all of them appearing to be no later than March 31st, is that correct?

(Testimony of James Reynolds.)

A. Yes.

Q. So that all of the property claimed by Consolidated Distributors Inc. was pulled onto the portion of the premises to which you have concerned yourself in your testimony prior to the end of March, is that correct? A. Yes.

Q. Now, Consolidated Distributors Inc. had contracted for the entire output, hadn't they? [29]

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness.

Mr. Barrett: I will withdraw my question.

Q. Were there any dealerships on Miller Scrapper's setup?

A. Yes, by Consolidated Distributors Inc.

Q. Consolidated Distributors Inc. was simply an organization to market them, was it? A. Yes.

Q. But it did not engage in the retail selling?

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness.

Mr. Barrett: I will withdraw my question.

Q. By what method were the scrapers retailed?

A. Through authorized and contracted dealers.

Q. Who were equipment dealers in their respective communities? A. Yes.

Q. In this state and in other states, is that correct? A. Yes.

Q. *The* contracted with them?

A. The salesmen employed by the Consolidated Distributors, Inc.

(Testimony of James Reynolds.)

Q. Did Miller Scraper Company contract with any of these dealers for franchises?

A. Not after the execution of the sales agreement between the Consolidated Distributors Inc. and Miller Scraper and Manufacturing Company.

Q. Not after you became the contracting party with Miller, is that correct?

A. That is correct.

Q. That is all. [30]

Mr. Thompson: No further questions.

Mr. Bechtel: No further questions.

The Referee: That is all. We will now have a five minute recess.

(Recess.)

The Bankruptcy Court reconvened at 2:35 p.m.

The Referee: The Hearing will come to order and we will resume.

JOHN AXMAN

Being first duly sworn, testified as follows:

Q. (By Mr. Barrett): Will you state your full name, please? A. John Axman.

Q. Where do you reside?

A. 1458 North Van Ness Avenue, Fresno, California.

Q. In 1952 and 1953 were you employed by Consolidated Distributors Inc.? A. Yes, sir.

Q. As a salesman? A. Yes, sir.

Q. Just what were your duties, can you describe them?

A. My duties were to sell our products to the

(Testimony of John Axman.)

dealers, and then help them to merchandise the same products.

Q. Just what products?

A. The Miller Scraper.

Q. You have seen and are acquainted with the contents of the agreement in writing, and its amendment, which has been introduced and is in evidence here?

A. I have read it, yes.

Q. Just what, briefly stated, were the arrangements between Consolidated Distributors Inc. and Miller Scraper and Manufacturing Company? [31]

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness.

Mr. Barrett: I am asking him to describe the means by which these scrapers were sold and merchandised which, I think, would be important to the business relationship which we have gone into here today.

Mr. Thompson: I believe the question to be as to whether or not there is a change of possession in this case, and I can't see what any particular sale would have to do with the case.

Mr. Bechtel: Well, I think that bears upon the same issue, whether there was a change of possession involved in conducting the business.

Mr. Barrett: With respect to the retailing of these scrapers, what were the arrangements between the Consolidated Distributors Inc. and the retail dealers who were set up?

Mr. Thompson: I object to that as being im-

(Testimony of John Axman.)

material—I can't see what was done later after the purported delivery to some dealers has anything to do with this case.

The Referee: The question here is whether or not there has been a sufficient change in possession under 3440 of the Civil Code. Now, how could the nature of the arrangements that Consolidated Distributors Inc. had with the various dealers tend to prove or disprove any facts bearing on the change of possession?

Mr. Barrett: Well, your Honor, isn't it true that the narrow question of change of possession is the ultimate question on which there is a lot of circumstantial evidence which is quite [32] proper and, in fact, indispensable because of the character of the case?

The Referee: I will overrule the objection, although, frankly, at the moment I can't see any relevancy. Now, will you state the question please?

Mr. Thompson: If you want to state what that arrangement is.

Mr. Barrett: Well, I would like to have the witness testify, your Honor. Is it through setup dealerships?

A. Yes, we set up dealerships. We would sell to these dealers, and help them to sell to the customers, where they needed help, in any form of trouble or failure of the scraper. The dealers would come to Consolidated Distributors Inc., and hold us responsible for the failure of the merchandise, or for any other cause.

(Testimony of John Axman.)

Q. Did Miller Scraper Company set up any dealerships?

A. Not during the period of this contract.

Q. And during the period of this contract, while Consolidated Distributors Inc. were situated on the premises and operated under this contract during that period of time, I am just identifying the time, were there any people who came to the office to talk about sales?

A. Yes, sir.

Q. Now, the office was occupied by whom?

A. The one particular building was occupied by Miller Scraper and Manufacturing Company, and by Consolidated Distributors Inc.

Q. In its respective wings of that building? [33]

A. That is correct.

Q. And people who had an interest in sales, would they call at the office, or would they call at the plant?

A. They would call at the Consolidated Distributors Inc. office, and in the event they unknowingly called at Miller's office, he would send them over to us, telling them that we had control of all the scrapers that were manufactured on the lot, and we would take care of them.

Q. Now, what personnel of Miller's was in that office?

A. Ray Miller was office manager.

Q. And he is still on the premises, is he not?

A. Yes, sir.

Q. Now after, say June of 1953, Consolidated Distributors Inc. no longer occupied those offices,

(Testimony of John Axman.)

did they? A. That is correct.

Q. And between that period of time and the end of the year, approximately how were "drop-ins", so-called, handled?

A. They were referred to Consolidated Distributors Inc. again.

Q. By whom?

A. By Miller Scraper and Manufacturing Company. If Miller was there and an employee of Consolidated Distributors Inc. was there, they handled the matter. Which ever took care of whatever had to be taken care of.

Q. Now, have you ever heard Miller refer people to Consolidated Distributors Inc., even during the period of time Consolidated Distributors Inc. did not occupy those offices?

A. Yes, sir, that is right. [34]

Q. During that period of time, that is, from June on, were you ever there when people would come in? A. That is correct.

Q. Did you ever observe or—strike that. Did you ever know of any instances in which Miller has demonstrated any of those machines?

A. No, I don't.

Q. Not during the period of the contract in effect, he didn't? You know that he did not?

A. That is correct.

Q. Now, will you describe to the Court—with reference to these pictures which I will show you in a moment—the Miller Scraper and Manufactur-

(Testimony of John Axman.)

ing Company's plant is housed in two rectangular buildings in an "L" shape, isn't it?

A. That is correct.

Q. And they are situated adjacent to the railroad and the right-of-way at Manning Avenue and the railroad property?

A. That is correct.

Q. There is a frame building which housed the two offices, is that correct?

A. That is correct.

Q. About how far from the east end of the Miller Scraper and Manufacturing Company building is this office building, can you give an estimate?

A. I would say about ninety to one hundred feet.

Q. Then there is the paint shed which is separate from any of these three buildings?

A. That is right.

Q. Is that situated in a southerly direction?

A. Southerly and westerly, from the office building.

Q. And it is situated approximately mid-way?

A. That is right.

Q. Now where, describe to the Court, were the scrapers parked after they were taken out of the paint shed?

A. Usually, they were parked in a southerly and easterly direction from the office building.

Q. In order that Mr. McGugin will understand the lay-out there, you say southerly and easterly from the office building?

A. That is correct.

Q. The paint shed is situated where with respect to the office building?

A. Southerly and westerly.

(Testimony of John Axman.)

Q. So that the scrapers were usually parked southerly in line with it?

A. That is about right—in line with it. Periodically, there would be quite a number of scrapers which took up so much space that it extended further out in a westerly direction.

Q. And how many lines would there be?

A. Usually two.

Q. And what grouping would be made?

A. The grouping would be made according to the serial numbers.

Q. Now, you and I were out there yesterday?

A. Yes, sir.

Q. And at that time you observed where the scrapers are now parked? A. That is correct.

Q. Observing the line of scrapers as shown in exhibit three of the Trustee's Exhibit for Identification, I will ask you to identify that, would you look at it? A. Yes, sir. [36]

Q. That shows the scrapers parked in a line with the shed, doesn't it? The paint shed?

A. In a southerly direction from it.

Q. And that shows it southerly?

A. Yes, that is correct. I take this as being a true picture of the location of the scrapers as they are now.

Q. Now, is that the location of the scrapers during the period of time that this contract was in effect? A. No, sir.

Q. Were those scrapers then situated aside from where they are now situated on the premises?

(Testimony of John Axman.)

A. Possibly, during a period of cleaning up or levelling, yes.

Q. Was there in the area, the storage area, any so-called "levelling off" or "scraping off" operations carried on during the period that this contract was in effect?

A. You say was there levelling operations carried on?

Q. Yes.

A. Yes, due to erosion and where the scraper was pushed on the ground it would get rough, and so they would clean up periodically and replace them back on the location to make a better appearance.

Q. How much time would be involved because of the moving for that purpose?

A. Sometimes there would be two, three, or four weeks, because it would be done by Miller Scraper and Manufacturing Company to keep his premises in shape and he would just do that [37] when he had men he wasn't using for productive purposes in the factory.

Q. Now, at anytime did you ever observe any of the scrapers at or near any other property?

A. No, sir.

Q. Observing, again, exhibit three, being Trustee's Exhibit Number Three for Identification, you see the wagons parked there?

A. That is correct.

Q. Now, that is taken from a position looking to the east, isn't it?

A. That is correct.

(Testimony of John Axman.)

Q. So that the wagons are in the easterly portion of the lot, aren't they?

A. North portion of the lot.

Q. North portion of the lot?

A. Of this here location in the easterly portion of the lot?

Q. Yes, easterly portion of the Miller premises—now, there are the trailers (pointing to picture). Is there any way that you can estimate the distance between the trailers and the line of the scrapers?

A. From the looks of the picture, approximately thirty feet between the scrapers and the feed wagons.

Q. Well, I just wanted your estimation in feet.

Mr. Thompson: I object to that as being immaterial and irrelevant, because it is based on a picture and obviously you can't tell as to how many feet there is in between the scrapers and the feed wagons.

The Referee: There might be some way to estimate the distance. These scrapers are of a certain width so that he might be able to judge the distance. [38]

Mr. Thompson: I will withdraw my objection.

Mr. Barrett: You are familiar with this ground, aren't you?

A. That is right.

Q. At anytime did you observe any equipment belonging to Miller Scraper and Manufacturing Company, or manufactured by it, grouped closer to the scrapers than thirty feet?

(Testimony of John Axman.)

Mr. Thompson: I object to his question as leading and suggestive and calling for the conclusion of the witness.

The Referee: He is asking him to observe the equipment belonging to Miller. Objection sustained.

Mr. Barrett: The scrapers that were pulled off and parked in this storage area, so-called, were placed on trust receipts to your knowledge, were they not? A. That is correct.

Q. And now, identifying those scrapers to which you referred in your testimony, have you ever observed any equipment belonging to Miller Scraper and Manufacturing Company, or other merchandise manufactured by Miller, grouped closer than thirty feet to the scrapers that you have just identified?

A. No, I haven't.

Q. Now, there is one big junk scraper, isn't there, presently on the premises?

A. That is correct.

Q. And that junk scraper is situated where?

A. To the easterly part of the premises—the foremost easterly part.

Q. Right over on the line?

A. Yes, sir, as I understand it. [39]

Q. And that junk scraper has been there for a long time?

A. It has been there ever since my acquaintance with the premises.

Q. And it is still there? A. Yes, sir.

Q. And was located on the extreme south portion of the premises? A. At what time?

(Testimony of John Axman.)

Q. March of 1952?

A. Well, Miller had some feed wagons out there and other junk. I think there were portions of his orchard heaters or something that he had manufactured in previous years.

Q. And what happened to those articles? Were they moved during your period of observation?

A. They were moved to another area.

Q. Who moved them?

A. Miller Scraper and Manufacturing Corporation.

Q. Are they there at the present time?

A. They are on the lot.

Q. Where are they situated?

A. On the southwesterly part of the lot.

Q. Southwesterly. Now, what—strike that. What was the distance, minimum distance between this aggregate of junk that you refer to and the line of scrapers or the mass of scrapers at anytime that you observed them?

A. I would say fifty feet to seventy-five feet, except for the way they are lined now.

Q. Do you happen to know what and how the scrapers were [40] lined up as they are now at the present time?

A. Miller Scraper and Manufacturing Company was in the process of cleaning up the yard, and they moved and lined them up there to the foremost easterly side of that lot in order to replace them.

(Testimony of John Axman.)

Q. Do you know what time of year that was done?

A. I think it was started thirty days previous to the time Miller Scraper and Manufacturing Company went into bankruptcy—thirty days previously.

Mr. Barrett: You may examine him now.

Q. (By Mr. Thompson): His property consists of about four acres?

A. I understand that is correct.

Q. About how far east of the office does the property line extend, in other words, how far is it from the east edge of the property line?

A. I would say about seventy-five feet.

Q. And you say that the scrapers were located just south of the office, is that right?

A. South and east of the line, mostly to the southerly direction.

Q. And how many feet from the easterly line were they located?

A. As I remember, there used to be about a thirty or forty foot drive around the scrapers.

Q. They were located about thirty or forty feet from the east line of the property?

A. That is right.

Q. This junk scraper that you referred to is located how far from the east line? [41]

A. I think it is right on the line. The only distinction I have on the line is by the change in the looks of the soil due to some of it being farmed and some of it not being farmed.

Q. How long was that junk scraper there?

(Testimony of John Axman.)

A. How long?

Q. Yes. A. This would be a guess.

Q. Well, all right guess.

Mr. Barrett: Give us your best estimate.

A. My best estimate would be approximately the same length with the addition of two feet by six and one half, and if you look at that folder there, it would give us the figure.

Mr. Barrett: You are referring to your specifications?

A. I am referring to the specifications as I know that junk scraper does not have the front dollies or hitch on it, so actually it would be, it is my estimation, it wouldn't be over nineteen feet long.

Mr. Thompson: Was it parked in an east and west direction? A. I think that is right.

Q. With one set of wheels—there are wheels next to the line, near the east line of the property?

A. I think that is correct.

Q. Then you say there was some orchard heaters south of the scrapers, is that right?

A. South and easterly of the scrapers.

Q. And I believe you said they were south in 1952, and they were moved west since?

A. That is right. They also have been moved further south.

Q. They are further south now than they were then, is that correct? [42]

A. Yes, that is correct.

(Testimony of John Axman.)

Q. How much further are these orchard heaters at this time than in 1952 and 1953?

A. Than they are at the present time?

Q. Yes.

A. I would guess one hundred feet.

Q. About one hundred feet further north than they are now, and they are about due south, would you say, of the scrapers?

A. I think that is correct.

Q. Now, how many scrapers at that time, at the most, would you say were parked there?

A. Approximately forty.

Q. About forty, and would they be one row, or two rows?

A. They would be in two rows, and possibly, three rows when the lot is full.

Q. Would there be about twenty scrapers in a row?

A. I don't think they extended that far south. I think they added three rows.

Q. How many scrapers would you say there were in a row? A. Oh, about fifteen.

Q. Would you say there were as many in a row in 1952 and 1953 as they are now in a row?

A. No, about fifteen in a row.

Q. And how far south of the office building did these rows start?

A. I would say directly east of the paint shed.

Q. And how far south of the office would you say that was?

A. Approximately seventy-five feet.

(Testimony of John Axman.)

Q. About seventy-five feet south of the office, and how far south of Manning Avenue is the office? [43]

A. Center line of the highway or which part of the highway?

Q. The south edge of the paved portion of Manning?

A. I would say approximately seventy-five feet.

Q. And how far, would you say it is, from the office to the south edge of the property line?

Q. In what direction from the office?

Q. South?

A. South edge of the office to the south edge of the property?

Q. I——

Mr. Barrett: If you can estimate it, do so. If you can't——

A. It is purely an estimate, but I would guess between four and five hundred feet.

Q. (By Mr. Thompson): And how wide is the property the other way, in your opinion, from the railroad to the east edge, that is, the average width—you understand it is wider at the Manning side than it is at the south edge, is that true?

A. I understand that is correct.

Q. About half-way down, in other words, what is the average width in an east-west direction?

A. I would rather guess from the railroad track—I do not know from the property line on the west side.

(Testimony of John Axman.)

Q. Yes, how far from the property line on the west side would you say it would be?

A. Under four hundred feet.

Q. About four hundred feet?

A. I would say it was between three hundred-fifty and four hundred feet.

Q. Now, are these scrapers parked enough distance apart so [44] that you can move them in and out with ease?

A. An experienced operator could.

Q. How far apart would they be parked?

A. Usually about enough for a man to walk in between them after they are parked.

Q. And the scrapers are about how wide?

A. I——

Mr. Barrett: They have precise widths.

Q. (By Mr. Thompson): The average scraper was approximately eight feet. Now, Mr. Brose had some property located on the premises, did he not, enclosed in a fence located west of the scrapers, did he not? A. That is correct.

Q. And he had a sign on the fence saying "This is the property of C. O. Brose. Keep out." Several signs in fact?

A. I understand that is correct, yes.

Q. Now, is it true that if you weren't present and if no one from Consolidated Distributors Inc. was present, Miller or some other member of the company would show these scrapers, would they not, in your absence?

(Testimony of John Axman.)

A. In our absence they would show the scrapers to someone else, yes.

Q. That is common practice?

A. Yes, that is common practice.

Q. Did you pay them any commission for selling the scrapers or assisting in the sale?

A. No.

Q. This exhibit number three here you stated is a true representation of the situation as it exists at the present time, is that right? [45]

Mr. Barrett: Only with respect to the scrapers, that was his testimony.

Q. (By Mr. Thompson): Isn't it a true representation of the premises as they appear now as far as the property is concerned as it is shown in that picture?

A. As far as I can determine from the picture, that is correct.

Q. I would like to offer this picture in evidence as Trustee's Exhibit Number Three.

The Referee: It is so received.

Q. (By Mr. Thompson): And the wagons there are the same or similar wagons as were on the premises in 1952 and 1953?

A. I think they are.

Q. That is all.

Q. (By Mr. Barrett): Did you see any wagons there when you were last on the premises?

A. No.

Q. Now, look at exhibit number three, you and I, and Mr. W. A. Reynolds were out there yester-

(Testimony of John Axman.)

day, weren't we? A. I was in the office, yes.

Q. Did you look out there and see if there were any wagons? A. No, I did not.

Q. You don't know, do you, whether that picture is an accurate representation of anything except the scrapers?

A. Today, that is correct—it may be ambiguous on the record.

Q. What do you mean, "It may be ambiguous on the record"? [46]

A. I can not tell whether these wagons have been moved, as approximately a week or two ago the situation was different.

Q. Did you see those wagons as shown in this picture? A. I have seen one there.

Q. When?

A. Oh, approximately a month ago.

The Referee: Any other questions?

Q. Well I think, your Honor, I should move to strike that picture probably as not being an accurate representation of the scene, as far as this witness is concerned, at the present time.

Mr. Thompson: I will testify to the taking of the picture, if you like.

Mr. Barrett: All right, then, I will not make the motion. That is all. May I call Ray Miller, please as an adverse party?

The Referee: Ray Miller please.

RAY MILLER

Being first duly sworn, testified as follows:

Mr. Barrett: I am calling Mr. Miller for cross examination. State your full name please?

A. Charles R. Miller.

Q. And you are commonly known as Ray Miller?

A. Yes, that is right.

Q. And where do you reside?

A. 2042 Gaither Street, Selma, California.

Q. You were an officer, were you not, at Miller Scraper and Manufacturing Corporation?

A. Vice President. [47]

Q. At the present time you are managing the business?

A. No, I am just the office manager.

Q. The premises have been sold, have they not?

A. Yes, sir.

Q. To a purchaser in these bankruptcy proceedings, is that true? A. That is true.

Q. What is the name of the present owner?

A. C. O. Brose.

Q. Mr. Brose is doing business under what name?

Mr. Thompson: I object——

Mr. Barrett: I would like to know who is in possession of the premises, and what has been done since the signing over of the business. Mr. Brose has undertaken to change things from the way it was. And the present situation is different than when delivery of the scrapers were made.

(Testimony of Ray Miller.)

Mr. Thompson: Counsel can not offer the testimony in rebuttal.

The Referee: I can't see any relevancy. Objection sustained.

Q. (By Mr. Barrett): Going back to the period of time that you were vice president of the company, do you recall that Consolidated Distributors Inc. made an agreement in writing with Miller Scraper and Manufacturing Company?

A. That is true.

Q. Shortly thereafter Consolidated occupied a portion of the premises as an office, did they not?

A. That is right.

Q. Beginning with what month?

A. June, 1952.

Q. Now, there is a frame building, is there not, on the premises? A. That is right. [48]

Q. What are the approximate dimensions of that building?

A. About fifteen by thirty, I would say.

Q. It is a rectangular building?

A. Yes, sir.

Q. There is a door facing toward the northerly direction, and a little porch over the door, and right under the eaves of this porch there was a sign, was there not? A. Yes, sir.

Q. What did the sign say?

A. Offices of Consolidated Distributors Inc. and Miller Scraper and Manufacturing Company.

Q. Were all the letters the same size?

A. Yes, sir.

(Testimony of Ray Miller.)

Q. What color?

A. White, and black and white.

Q. And cut out in fancy lettering?

A. Yes, sir.

Q. A portion of it is still there, and the lower portion has been cut off? A. That is right.

Q. The sign which was originally erected and constructed was painted all over? A. Yes, sir.

Q. At present the bottom shows where it has been cut off? A. Yes, sir.

Q. Did you cut that off in your shop?

A. Yes, sir. Our shop foreman did that.

Q. When?

A. That was done approximately October of 1953.

Q. So, until approximately October, Consolidated Distributors Inc.'s name was still there on that sign? A. Yes, sir.

Q. Their name was on the door also?

A. Yes, sir.

Q. When did Consolidated Distributors Inc. move out of the premises?

A. About June. [49]

Q. And prior to that time, as you enter the front door of these premises and entered into a waiting room, there was a door to the right which led into the Miller Scraper and Manufacturing Company and on the left there was a door which led to Consolidated Distributors Inc.?

A. Yes, sir.

(Testimony of Ray Miller.)

Q. There is only one door for egress to and from the building? A. That is right.

Q. Once you get into the building, were the signs on the respective office doors identical?

A. No, I believe Consolidated had their sign etched in gold and block letters, but ours was just in block letters, approximately the same size.

Q. Did Consolidated pay rent?

A. Yes, sir, \$50 a month.

Q. In cash? A. No, by check.

Q. And it is entered on your books?

A. Yes, I have evidence in a portion of my vouchers.

Q. Did you have any help in your office?

A. Yes, sir. A Mr. Al Hucksley was helping.

Q. And you two ran the Miller Scraper and Manufacturing Company office? A. Yes, sir.

Q. And you continued after Consolidated Distributors Inc. left? A. Yes, sir.

Q. Did Consolidated Distributors Inc. have a separate office force?

A. Yes, sir, two—Mr. Reynolds Senior and he was assisted by his son.

Q. And also by a girl? A. Yes, sir. [50]

Q. Consolidated Distributors Inc. had a separate Post Office box number, did they not?

A. Yes, sir.

Q. And did Consolidated Distributors Inc. have a separate letterhead on their stationery?

A. Yes, sir.

Q. Now, with respect to your relationship with

(Testimony of Ray Miller.)

them under the written agreement of March 20, 1952, did your company dispose of all of its manufactured scrapers through Consolidated Distributors Inc. for a period of time?

A. Yes, sir. They were our exclusive distributors.

Q. And all of your scrapers, of every kind and nature, was marketed through Consolidated?

A. Yes, sir.

Q. Now, with respect to the terms of that agreement, which speaks of a storage area, would you tell us where the output of Miller Scraper and Manufacturing Company, which was marketed through Consolidated Distributors Inc., was placed on the premises?

A. Well, it was in a southerly direction from the office, I would say, beginning about fifty to seventy-five feet south.

Mr. Thompson: In order to save time—it is stipulated that this witness' testimony would be the same as the other witnesses.

Mr. Barrett: It is hard to phrase the stipulation for the record. Thank you very much.

Q. You say they were put in there directly south of the office?

A. South and east, but mainly south.

Q. Now, you know where the paint shop is located?

A. Yes, sir.

Q. Which is southerly of both the office and the [51] Miller manufacturing building?

A. That is right.

(Testimony of Ray Miller.)

Q. And 'is between the two. It is located approximately equal distance?

A. Approximately.

Q. But, in a southerly direction how far southwest from the corner of the office building, would you say that the paint shop is located?

A. About fifty to seventy-five feet.

Q. So the scrapers were lined up with the office building and not with the paint shop, is that correct—or easterly of the office building?

A. It was almost directly south when we had two lines there. The line was close to the boundary line—southward and east.

Q. And you had occasion to see those scrapers every day? A. Yes, sir.

Q. And when they were pulled off the assembly line out of the paint shop, did you actually go out and make the presentation of the scraper?

A. No, not exactly, but I saw to it that there was an inspection report completed and filled out in the office.

Q. Now, calling your attention to the area occupied by the scrapers at that time, how many acres were so occupied?

A. Approximately one acre.

Q. For what purpose was the storage area used?

A. For the purpose of stockpiling these scrapers.

Q. How many acres in the Miller premises altogether? A. Four. [52]

Q. Was there any equipment manufactured by

(Testimony of Ray Miller.)

the Miller Scraper and Manufacturing Company other than the scrapers stored in this area?

A. No, not stored in that area.

Q. You are aware, aren't you, of a big junk scraper?

A. Sixteen yard scraper, yes.

Q. It has been there all the time?

A. Yes, prior to the Consolidated Distributor Inc. contract, I believe.

Q. And it is still there? A. Yes, sir.

Q. That is approximately on the boundary?

A. It is right on the east boundary.

Q. Talking about the southern storage area, was there ever anything your company stored there on it?

A. On the southerly part there were wagons.

Q. How many wagons did you manufacture?

A. Twenty-one.

Q. That is the total output of Miller Scraper?

A. Yes.

Q. How many months did they manufacture wagons?

A. Oh, I would say approximately four to five months.

Q. In 1952?

A. We started in the latter part of 1952 and carried it on to 1953.

Q. About how many a month?

A. Well, of course, we worked those in with the scrapers, and I imagine four to five a month.

(Testimony of Ray Miller.)

Q. You say you worked them in on the manufacturing program? A. Yes, sir. [53]

Q. How many of the southerly portion of the lot are yours?

A. I would say as high as fifteen.

Q. What was the closest of any scrapers to the line?

A. Oh, I would say a good seventy-five feet—well, make it fifty feet.

Q. With respect to a line drawn through the paint shop in a southerly direction, would those wagons have been on the east or west side of that line? A. On the east side.

Q. How far would they be from the southern boundary line of the premises?

A. You are still talking about wagons now?

Q. Yes.

A. Possibly, one hundred feet.

Q. And about how long was any wagon stored down on the southern portion of the lot?

A. Well, we actually had a distributor in Oakland that took our output of wagons, but he also parked there—a sort of the same arrangement that we had with Consolidated Distributors Inc. here, but he moved them out in three or four months—I would say four or five months after we had completed the production.

Q. Are there some wagons on the premises at the present time? A. Just one.

Q. Would you look at this exhibit number three

(Testimony of Ray Miller.)

for the Trustee—you can identify the location, can't you? A. Yes.

Q. And where are they situated?

A. I would say directly south of the paint shop.

Q. And further beyond and in what direction are the scrapers in that picture? [54]

A. They are directly south, about fifty to seventy-five feet.

Q. And aren't they also further east?

A. Well, where they are parked now, it is almost to the south of these wagons.

Q. Now, where are there three wagons on the premises at the present time?

A. There is one wagon there.

Q. As of yesterday, were there three wagons there? A. No, there was one wagon.

Q. How long since there was three?

A. It has been approximately two months, anyway, I would say.

Q. About two months—what happened to those two wagons?

A. The one wagon that is remaining there belonged to the Miller Scraper and Manufacturing Company, and the other ones belonged to our distributor in Oakland, and they were removed.

Q. In Exhibit Number Three, the line of scrapers are approximately in their present location, or exactly? A. Exactly.

Q. Now, how long have those scrapers been so situated in that location?

A. Oh, I would say they were moved back there

(Testimony of Ray Miller.)

just about a month prior to our bankruptcy, and when we cleaned off the weeds.

Q. They were lined up there by your organization?
A. Yes, sir.

Q. About what month would that be?

A. Well, let's see, probably along the first of July. [55]

Q. Of 1954?
A. Yes, sir.

Q. And prior to that time where were they located?
A. Just east of that location.

Q. How many feet easterly from their present location were they situated at that time, can you give me an estimate?

A. Approximately twenty-five to fifty feet.

Q. Were there more than one line?

A. At times, yes.

Q. Do you recall whether there was more than one line on the lot?

A. I believe, the last time I was there, I believe they were more or less lined up like they are now.

Q. Just in a single line?
A. Yes, sir.

Q. They were moved by persons under your direction?

A. Yes, Miller Scraper and Manufacturing Company.

Q. During the time that the Consolidated Distributors Inc. had a contract in force with you, was there any scrapers other than what was consigned and set over for Consolidated Distributors Inc. on this lot, or on that portion of the premises in which these scrapers were situated?

(Testimony of Ray Miller.)

A. No, there were not.

Q. Now, in about December there of last year, Consolidated Distributors Inc.'s agreement was cancelled, is that true? A. That is true.

Q. There were a few scrapers manufactured by your organization subsequently, wasn't there?

A. Yes.

Q. And what did you do with those scrapers?

A. Well, they were six and one-half cubic yard size and I believe there were orders for those shipments and—— [56]

Q. And they were moved right out?

A. Yes.

Q. Did you ever store your own manufactured equipment other than what we are talking about on these Trust Receipts in a triangular space bounded by the plant, Manning Avenue and the railway right-of-way?

A. Yes, we had scrapers sitting there.

Q. May I ask you, during the period of time that Consolidated Distributors Inc. had its agreement in force with you, a part of that time Consolidated Distributors Inc. had no office there, did they?

A. Well, right at the first, of course. They moved in shortly after the office was completed and then from June of 1953 to December of 1953 they were not there.

Q. They did not have an office there?

A. No.

Q. And from time to time representatives and

(Testimony of Ray Miller.)

agents and servants of Consolidated Distributors Inc. would call at your office? A. Yes.

Q. Mr. Axman called, didn't he, periodically?

A. Yes.

Q. James Reynolds? A. Yes.

Q. And Mr. W. A. Reynolds? A. Yes.

Q. Anyone else? A. No.

Q. They were the active servants of the company? A. Yes, sir.

Q. And supposing someone would come into the office during that period of time and inquire about those scrapers—what would you tell them?

A. Well, if there were no representatives of Consolidated Distributors Inc. to show them the scrapers, and show them the features of it, we [57] would either make arrangements for them or contact them.

Q. Now, you were in charge of the office during that period of time, weren't you? A. Yes.

Q. And did you go out there usually with them?

A. If there was no one else around—usually my brother was there or someone else there to show them around.

Q. And did you or a representative of your organization tell everyone about the Consolidated Scrapers, and take pains to point out to everyone that those were Consolidated Scrapers?

A. Yes, if they were interested in purchasing a scraper, and we pointed out the fact that they were exclusive distributors.

(Testimony of Ray Miller.)

Q. And you also pointed out the fact that they were manufactured by you? A. Yes.

Q. But everyone was personally notified that they were owned by Consolidated Distributors Inc.?

A. Yes.

The Referee: We will now have a recess.

(The Bankruptcy proceedings recessed at 3:45 p.m.)

(The Bankruptcy proceedings reconvened at 4:10 p.m.)

The Referee: The Hearing will come to order.

Mr. Barrett: Sir, I trust we will finish by 5:00 o'clock.

The Referee: The fact is there was a porch on the front of the building and the wings are off the waiting room of it. Several times that has been brought up. I don't think there is any dispute about it, and I am convinced that these trailers are just to the south and slightly to the east of the [58] office building there during the time the contract was in effect, and they were moved to the present position along about July of this year by the Miller Scraper and Manufacturing Company.

Mr. Barrett: Well, I hope I am not boring you, your Honor.

The Referee: Well, it is a highly technical situation. I can see that, but we just can't go on and on with small details—it has been just one detail after another.

Mr. Barrett: Let's proceed, then, keeping in mind the facts which are well established. Is it

(Testimony of Ray Miller.)

your Honor's intention to permit us to argue the matter today?

The Referee: No, I don't think we will have time.

Mr. Barrett: All right, we can at least finish the testimony.

The Referee: I hope so.

Q. (By Mr. Barrett): Mr. Miller, you have heard the previous testimony? A. Yes, sir.

Q. You have been here all during this hearing, and by way of shortening it up, there can be stipulated by reference to what has been previously testified to. I will show you these Trust Receipts—

Mr. Thompson: I believe there is no dispute about that.

Mr. Barrett: It may be stipulated—

Mr. Thompson: The Trust Receipts are the same ones you showed the other witnesses.

Mr. Barrett: Yes.

Q. The testimony previously received concerning the method of sending those invoices twice a month and what the invoice contained, how they were attached, and presented to the bank, is substantially correct?

Mr. Thompson: That is correct.

Q. (By Mr. Barrett): Now, with respect to the money that you received from the Bank of America, have you received—it is a fact that you have received all of the money represented by the sales prices of the articles listed on all of these Trust Receipts?

(Testimony of Ray Miller.)

A. That is correct—not the sales price, but the cost price to Consolidated Distributors Inc.

Q. Yes, that is the price of which you disposed of them to Consolidated Distributors Inc.—not the retail price; and you have received every dime on that prior to going into bankruptcy, and most of it, in fact, all of it, more than four months prior to bankruptcy, is that right? A. Yes.

Q. That is all.

Mr. Thompson: Mr. Miller, when people would come to see these scrapers, and members of the Consolidated Distributors Inc. weren't present, you would you show them, wouldn't you? A. Yes.

Q. Would they inquire as to who owned the scrapers?

A. Well, yes, when it got to the point that they were interested in buying the scrapers. Usually they were passing by and had no special interest, then, we didn't go into details of who owned them and so forth.

Q. And in most instances when you showed the scrapers, was anything whatsoever said as to who owned the scrapers?

A. Yes, most of the time. [60]

Q. Didn't you tell me half an hour ago, Mr. Miller, usually nothing whatsoever was said as to who owned the scrapers?

A. Well, if it got to the point where they wanted to buy the scraper, but where they weren't definitely interested in buying the scrapers—

Q. Didn't you tell me half an hour ago that

(Testimony of Ray Miller.)

that subject never came up as to who owned the scrapers—just answer yes or no?

A. Well, I guess——

Q. Just say, yes or no? A. I'd say yes.

Mr. Barrett: What is the explanation for the statement that you made to Mr. Thompson, if any?

A. Well, what I had in mind at that time—anybody that was just coming by and looking at the scrapers just out of curiosity, we usually didn't go into the trouble of explaining who our distributor was, and all that.

Q. If they were just idle curiosity seekers?

A. Yes, if they got to the point where they had to buy the scraper, then, we would go into the details of who would they buy them through.

The Referee: How about creditors and people who were supplying the fuel, and other services, and so forth. Did you tell them as to whom the scrapers belonged?

A. Yes, we definitely did. When the jobbers were coming through, and the salesmen who were representatives of these different companies.

The Referee: You told them about the scrapers out in the yard—you told them they belonged to the Consolidated Distributors Inc.? [61]

A. Yes, and they knew that we had an arrangement with Consolidated Distributors Inc.

The Referee: All of your creditors—did you tell the power company? A. No, I did not.

The Referee: The telephone company?

A. Not the telephone company.

(Testimony of Ray Miller.)

The Referee: All of your creditors?

A. No, not all of our creditors—maybe the steel salesmen.

The Referee: One of the crucial questions here is the fact that credit has been extended to somebody acting as an owner, and that seems to be one of the material facts in this case.

Mr. Barrett: It would seem, your Honor, as the contract is recorded, that these large suppliers would keep themselves informed. I don't think you can produce any evidence on that point. With respect to people who did come into your office, as did your own suppliers and jobbers and that sort of thing, you told them, a large number of them, didn't you?

A. Yes, just in the ordinary course of conversation when they asked us who all the scrapers belonged to.

Q. And don't you know, as a matter of common knowledge, that the creditors knew who the scrapers belonged to?

A. I wouldn't say all of them.

Q. All of them did not know about the bankruptcy? A. No, sir.

Q. But as far as the telephone company is concerned, they did? A. That is right. [62]

Q. As far as the bigger suppliers are concerned, you had an opportunity to talk to a great many of them didn't you? A. Yes.

Q. (By Mr. Thompson): Did you owe many of

(Testimony of Ray Miller.)

the creditors before you entered with this arrangement with the Consolidated Distributors Inc.?

A. Yes.

Q. How much?

A. A very small amount—in the four or five thousand dollar bracket.

Q. And do you still owe money to some of these creditors?

A. Yes.

Q. And after June of 1953 did you manufacture anything?

A. Well, we did to some extent, and that is by warehousing with Mr. Brose—who had merchandise still in the yard, and that is the way we worked all of the raw materials.

Q. Were there any persons who became creditors during 1952 and 1953?

A. Yes.

Q. And you still owe them money, do you not?

A. Yes.

Q. That is all.

Mr. Barrett: No further questions.

The Referee: That is all?

Mr. Barrett: I will rest the Consolidated Distributors Inc. case now, your Honor.

Mr. Bechtel: I would like to call Mr. Forrest, now, if I may your Honor?

The Referee: Yes. [63]

JESSE A. FORREST

Being first duly sworn, testified as follows:

Q. (By Mr. Bechtel): State your full name, please?

A. Mr. Jesse A. Forrest.

(Testimony of Jesse A. Forrest.)

Q. Where do you reside?

A. 2734 A Street, Selma, California.

Q. And you are manager of the Selma Branch Bank, Bank of America? A. Yes, sir.

Q. And as such, are you familiar with the transactions the bank had with Consolidated Distributors Inc.?

A. I am.

Q. When did that financing begin?

A. I would say in June, 1952.

Q. And what was the nature of that financing?

A. We had agreed to loan Miller Scraper and Manufacturing Company and Consolidated Distributors Incorporated ninety percent of their cost, of the equipment.

Q. Under what sort of security?

A. Under Trust Receipt financing, and on their honesty and fairness, and on this trust receipt basis.

(Statement by Referee.)

Mr. Bechtel: Well, these preliminary questions I have asked here for the purpose of showing a change of possession. Now, in connection with the trust receipt financing which you just testified to, was it your practice to have inspection, or inspections, made of the property under the trust receipts?

A. It was.

Q. How frequently?

A. At least once a month. [64]

Q. When did those inspections commence?

A. In—if you permit me to, I will refer to our inspection sheet here and I will tell you exactly the first time—it was on July 29, 1952.

(Testimony of Jesse A. Forrest.)

Q. And your testimony is that regular monthly inspections were made thereafter?

A. Yes, sir, they were.

Q. To and including what date?

A. September 29, 1954.

Q. I believe it is agreed, is it not, that all of the equipment described in the trust receipts are on the premises at the present time with the exception of those which have been sold or are in the process of selling?

Mr. Thompson: So stipulated.

Mr. Barrett: I will stipulate also.

Q. (By Mr. Bechtel): Now, how many, approximately, of those inspections did you make personally?

A. Just roughly, I would say fifty percent or a little more.

Q. And would those inspections consist of visiting the premises yourself?

A. That is correct.

Q. And what was the extent of your checking?

A. We would have to give you the whole detail. We have prepared this list from the outstanding items of the trust receipts that you have seen, and then we check these flooring inspection reports, the serial numbers, and the size of the scraper with those physical items that were on the premises.

Q. And upon what portion of the premises were [65] the scrapers located during the time of your first inspection?

(Testimony of Jesse A. Forrest.)

A. Well, I would say that they were south of the office, and paint shop.

Q. In a place set apart from the rest of it?

A. They appeared to be set apart, yes, because some of them were so close together you could hardly get in between them, some of the scrapers, and *their* being lined up so close together that you could hardly get in between them to read the serial numbers.

Q. You weren't referring to the scrapers under the trust receipts? A. Yes, that is right.

Q. And did you also find that situation to be true? A. Yes, sir.

Q. They were?

A. Not all of them were that close together, but a number of them.

Q. During your inspections that you made personally, did you find that the scrapers under your trust receipts were always more or less in the same area as they had been in your initial inspection?

A. Yes, sir.

Q. And did you have any difficulty at anytime locating all the scrapers described in your trust receipts? A. No, sir.

Q. Were there any other items not described in your trust receipts mingled with the scrapers described in your trust receipts?

A. I would say no, not from the first to the last. If you mean from one number to the other, there was none intermingled in there that I can recall

(Testimony of Jesse A. Forrest.)

that were not identified [66] by the numbers on our trust receipts.

Q. Would it be your testimony that the scrapers described in the trust receipts were set apart from any property on the premises? A. Yes.

Q. That is all.

Q. (By Mr. Thompson): These scrapers were out on bare ground? A. Yes.

Q. And there were no fences between these scrapers and property located within fifty feet of these scrapers? A. No.

Q. Nor any lines or other things on the ground to differentiate between these scrapers?

A. Other than this fact—it appeared that right after they originally put these scrapers out there they seemed to dig a space and flatten it out—that differentiated it from the other areas. They flattened this area out.

Q. And weeds would grow up and rain would erode the area and they would move the scrapers off onto another space?

A. If they moved them, in my recollection, they would be only moved a few feet north or south from where they were located. They wouldn't be moved from the easterly side or the westerly side.

Mr. Barrett: You have heard the previous testimony concerning how the scrapers had been?

A. Yes, sir.

Q. Which is stipulated as being correct, is that true? [67]

A. When they brought in the trust receipt—

(Testimony of Jesse A. Forrest.)

Mr. Thompson: I stipulate no dispute in that regard.

Q. (By Mr. Barrett): How many dollars has your bank paid Miller for the items now described in the trust receipts and remaining unsold?

A. As of the date of our last inspection on September 29, twenty-three items totalling \$30,787 were on hand, and unsold, and four had been sold totaling \$8,709—proceeds of which are in the hands of trustees—making a total of twenty-seven items, and in dollar amount, \$39,496.00.

Q. I take it, Mr. Thompson and Mr. Bechtel, there is no dispute about the identity of the articles?

Mr. Thompson: No.

Mr. Bechtel: No.

Mr. Thompson: In other words, there is nothing missing that hasn't been properly accounted for?

Mr. Barrett: Now, these flooring inspection reports that you have before you are records kept in the regular course of business that you have in the bank? A. Yes, sir.

Q. Required by the rules and regulations of the bank? A. That is right.

Q. Is this—let me see the last one, please?

The Referee: While he is looking at those—you have already brought out the arrangements with the Secretary of State?

Mr. Bechtel: Yes, your Honor, I have.

Mr. Barrett: It is attached to the exhibits, your Honor. [68]

(Testimony of Jesse A. Forrest.)

Mr. Bechtel: Not to those exhibits, but they have been filed.

Mr. Barrett: Your Honor, if there be no objection, I wish to offer this last flooring inspection report from which the witness read, the account in dollars, which is a report dated 9/29/54 bearing the signature of Mr. Forrest. Is that your signature?

A. Yes, sir.

Q. I wish to offer this into evidence next in order.

The Referee: It will be so received and marked Exhibit D.

Q. Did you make an inspection report in September of last year? A. Yes, sir.

Q. May I look at that please? A. Yes.

Q. You made one every month including September, didn't you?

A. Yes. The bankruptcy was filed in August?

The Referee: August 2, 1954.

Q. (By Mr. Barrett): Now, your Honor, for the purpose of showing the continuity of these articles, I would like to introduce two more of these reports into evidence, one report dated 9/22/53, which is signed by J. R. Gilbert, and H. E. Stauker, in Fresno. Are they officers or employees of the bank? A. Yes.

Q. I would like to introduce that into evidence, your Honor, and lastly, the report dated 7/27/54, signed by J. R. Gilbert and yourself—and that is on the reverse of the first sheet signed by yourself

(Testimony of Jesse A. Forrest.)

and on the next page by Mr. Gilbert. May I introduce them, respectively, as next in order?

The Referee: The inspection report dated 9/22/53 will be received in evidence as Exhibit E.

Mr. Barrett: I have no further questions.

Mr. Thompson: No further questions.

Mr. Bechtel: Nothing further. I would like to suggest, your Honor, that your Clerk have photo-stats made of those last three exhibits.

The Referee: Yes, you take that up with her. That is all Mr. Forrest.

Mr. Barrett: Do you have any evidence?

Mr. Thompson: I would like to offer those pictures in evidence. Do you want me to testify?

Mr. Barrett: Well, that sort of puts me in a spot, but I don't want to stipulate to admitting the pictures which I think are immaterial, and perhaps misleading, but you have already told us about when they were taken. What is—may I ask what your purpose would be to introduce them?

Mr. Thompson: Show them in adjudication of bankruptcy of what it is worth.

Mr. Bechtel: I am going to object on the grounds that it is immaterial and irrelevant by reason of the fact that the only pertinent testimony I would think is the condition of the tractors at the time, or scrapers, at the time that "possession" changed from the Miller Scraper and Manufacturing Company to Consolidated Distributors Incorporated.

The Referee: How about the word "continuous"?

Mr. Bechtel: Well, continuous—there is a question of what [70] the word “continuous” implies.

The Referee: It has not necessarily been established, but it is relevant to that fact — objection overruled. The exhibits are marked.

Mr. Bechtel: I think they are poor pictures.

Mr. Thompson: You are not objecting to the lack of foundation?

Mr. Bechtel: No, I would stipulate they were pictures made by you and indicated——

Mr. Barrett: Your Honor, this case presents some very fine points.

Mr. Thompson: Your Honor, the court has raised the question of creditors’ reliance. I must confess I was caught by surprise and so I didn’t get a chance to get any witnesses and was under the impression that the law is not concerned with actual reliance by creditors. But I would like to see if any creditors were misled, and get their testimony on that point.

The Referee: I think, probably, in fairness to both sides, they should have time to consider the evidence and ascertain whether or not they have any further facts to produce, and so that we will not be restricted by lack of time and because there is a considerable amount of money involved here,— I think that we will continue this to a future date.

Mr. Thompson: We would have to come back to argue it anyhow.

Mr. Barrett: We certainly wish to have an opportunity to advise the Court upon the law, either in written form or orally.

The Referee: All right, let's continue the matter then to some [71] later date. I will have to consult my calendar when I go back to my office.

Mr. Bechtel: I would like to suggest that the reporter give us a transcript so that we shall have an opportunity to review it.

(The Bankruptcy proceedings came to an end at 4:35 p.m.) [72]

[Endorsed]: Filed June 3, 1955.

CONSOLIDATED DISTRICT NO. 10

TRUCK RENTALS: FLOORING

8 RP 1760 (76)

The undersigned as Trustee (as on the meeting of the terms as defined in the Uniform Trust Statute (Law of California)) heretofore referred to as Trustee in and to the Uniform Trust Statute (Law of California) hereby certifies that the following described chattels, to-wit:

Year	Make	Amount	Month No.	Serial No.	Cost	Resale Price	Date
1952	Miller	Rotary Scraper 3 cu. yd.		C-357	1770.00	1590.00	1
1952	Miller	Rotary Scraper 3 cu. yd.		C-358	1770.00	1590.00	2
1952	Miller	Rotary Scraper 3 cu. yd.		C-359	1770.00	1590.00	3
1952	Miller	Rotary Scraper 3 cu. yd.		C-360	1770.00	1590.00	4
1952	Miller	Rotary Scraper 3 cu. yd.		C-361	1770.00	1590.00	5
1952	Miller	Rotary Scraper 3 cu. yd.		C-362	1770.00	1590.00	6
1952	Miller	Rotary Scraper 3 cu. yd.		C-363	1770.00	1590.00	7
1952	Miller	Rotary Scraper 3 cu. yd.		C-364	1770.00	1590.00	8
1952	Miller	Rotary Scraper 3 cu. yd.		C-365	1770.00	1590.00	9
1952	Miller	Rotary Scraper 3 cu. yd.		C-366	1770.00	1590.00	10
1952	Miller	Rotary Scraper 3 cu. yd.		B-51	3142.00	2100.00	11
1952	Miller	Rotary Scraper 3 cu. yd.					12
1952	Miller	Rotary Scraper 3 cu. yd.					13
1952	Miller	Rotary Scraper 3 cu. yd.					14

The Trustee hereby acknowledges and agrees that a security interest (as defined in the Uniform Trust Receipts Law of California) in the above chattels remains in or will remain in Entruster, or if not heretofore retained, hereby transfers title and security interest in said chattels to Entruster, all as security for the payment of \$ 17,700.00

together with interest thereon from date hereof at the rate of 5.00 per cent (5.00 %) per annum, until paid, and that the Trustee does hereby agree to pay said sum to the said Entruster at its office

Branch, in this City on or before Jan 1 19 53 the date on which this Trust Receipt transaction shall terminate, unless previously terminated in accordance with provisions set forth on reverse hereof or extended in writing by the Entruster.

DATED at Bellevue, California this 5th day of January 19 53

WITNESS W. G. King James O. King
 By James O. King
 TRUSTEE

TRUSTEE'S ORIGINAL

The undersigned as Trustee (to-wit: the meeting of the term as defined in the Uniform Trust Receipts Law of California) heretofore referred to as Trustee, hereby acknowledges the following interest in the above described property, subject to the conditions set forth below and on reverse hereof, the following Association previously referred to as "Entruster", subject to the conditions set forth below and on reverse hereof, the following described property, to-wit:

Year	Make	Model	Serial No.	Entrusted	Serial No.	Car	Rebate Price	Date
1952	Miller	Rotary Scraper	C-357	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-358	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-359	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-360	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-361	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-362	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-363	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-364	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-365	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	C-366	3 cu. yd.			1500.00	10
1952	Miller	Rotary Scraper	B-31	3 cu. yd.			1500.00	1
1952	Miller	Rotary Scraper	B-32	3 cu. yd.			1500.00	12
1952	Miller	Rotary Scraper	B-33	3 cu. yd.			1500.00	13
1952	Miller	Rotary Scraper	B-34	3 cu. yd.			1500.00	14

The Trustee hereby acknowledges and agrees that a security interest (as defined in the Uniform Trust Receipts Law of California) in the above chattels remains in or will remain in Entruster, or if not heretofore paid, jointly or severally, together with interest thereon from date hereof at the rate of 5 per cent (5 %) per annum, until

paid, and that the Trustee does hereby agree to pay and sum to the said Entruster at its San Francisco Branch, in this City on or before May 1, 1953, the date on which the Trust Receipt transaction shall terminate, unless previously terminated in accordance with provisions set forth on reverse hereof or extended in writing by the Entruster.

DATED at San Francisco, California, this 5th day of January, 1953.

WITNESS W. B. Guy By James C. Guy
 JAMES C. GUY, Trustee
 JAMES C. GUY, Trustee

197 3817

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MILLER SCRAPER COMPANY

Corner 99 Highway and Manning Avenue
P.O. Box 58
SELMA, CALIFORNIA

Sold to Bank of America Date Dec. 31, 1952
Selma, Calif. Your No. 1055 - 3 yd. scraper
 Date Shipped _____ Delivered to _____
 Miller Scraper Co. lot.

Quantity	Description	Price	Amount
10	3 Cu. Yd. Miller Rotary Scrapers w/dollies. Serial Nos. C-357, C-358, C-359, C-360, C-361, C-362, C-363, C-364, C-365 and C-366	2950.00	29500.00
	Less 40%		11800.00
			\$17700.00
1	6 1/2 Cu. Yd. Miller Rotary Scraper w/dollies. Serial No. B-81	5720.00	
	Less 40%	3432.00	
	Total		\$21132.00
	For account of:		
	Consolidated Industries, Inc. P.O. Box 627 Selma, California		

1-189-1000-1000



CLAIMANT'S EXHIBIT "A"

This Agreement, made and entered into at Selma, California, this 20th day of March, 1952, by and between Kenneth L. Miller, doing business as Miller Scraper Co. of Selma, California, hereinafter called the Manufacturer, and Industrial Equipment Co., Inc., a Colorado corporation of Denver, Colorado, hereinafter called the Distributor;

Witnesseth: That for and in consideration of the acts, promises, covenants, and agreements on the part of the parties hereto to be done, kept and performed as hereinafter set forth, it is agreed as follows:

1. That the Manufacturer hereby grants to the Distributor exclusive right of sale of all Miller Scrapers manufactured by said Manufacturer save and except those scrapers now on order, being approximately thirty in number, and further, subject to the distribution agreement by and between the Manufacturer and Jack Garrett of Coolidge, Arizona, and Chester O. Frey of Selma, California. In reference to said last mentioned distributing contracts, the Manufacturer agrees to cancel same on or before six months from date hereof.

2. For and in consideration of the granting of the exclusive distributorship to the Distributor herein, said Distributor agrees to loan to, or procure a loan in favor of, said Manufacturer in the sum of \$75,000.00 within thirty (30) days from date, payable in advances as money is needed by the Manufacturer for enlargement of the factory

Claimant's Exhibit A—(Continued)

and equipment as hereinafter stated. The loan is to be secured by a deed of trust on the real property situated in the County of Fresno, State of California, described as follows:—

That portion of the Northeast quarter of Section 26, Township 15 South, Range 21 East, Mount Diablo Base and Meridian, described as follows: Beginning at a point on the North line of said Section, 1620 feet North $89^{\circ} 41'$ West of the Northeast corner of said Section; thence South $0^{\circ} 19'$ West 659.63 feet to the Northeasterly line of the Southern Pacific Railroad Co.'s Right of Way; thence along said Right of Way, North $41^{\circ} 01'$ West 880.50 feet to said North line of Section 26; thence South $98^{\circ} 41'$ East 583.25 feet along said Section line to the point of beginning.

EXCEPT the East 75 feet of the North 290 feet thereof;

together with chattel mortgage on all fixtures and equipment located on said real property, an itemized list of which is hereto attached, made a part hereof and hereby referred to for further certainty. As additional security, the Manufacturer agrees to take out a policy or policies of term life insurance covering the life of the Manufacturer with the Distributor as beneficiary in an amount equal to the unpaid balance of the hereinbefore mentioned loan; and in this respect, it is understood and agreed that in the event of the death of said Manufacturer and payment to the Distributor or loaning agency of the balance of the loan from said policy

Claimant's Exhibit A—(Continued)

or policies, that said Distributor will issue releases or sign any other necessary papers for the release of other securities given and any excess of the moneys collected on the policies over and above the amount of the loan unpaid. The aforementioned deed of trust is to provide for advances, the aggregate amount of the loan not to exceed \$75,000.00. The total aggregate amount of the said loan shall be payable over a period of ten years in equal monthly installment payments commencing on the 20th day of September, 1952, and payable on the 20th day of each and every month thereafter until the said obligation is fully paid, together with interest thereon at the rate of six per cent per annum payable September 20, 1952, and on the 20th day of each and every month thereafter with the said installment payments, and the interest to be less than that if the loan can be obtained for less interest.

It is understood and agreed by and between the parties to this contract, that a letter of credit will be established with the Bank of America with a maximum liability of \$75,000.00, under which the Manufacturer may draw drafts for the purchase of equipment, the construction of additional buildings or additions required and the payment of the existing liens on the real and personal property.

The Manufacturer hereby agrees that, within 120 days after the loan hereinbefore mentioned is made available to him, he will increase the size of his plant and plant equipment to the extent that

Claimant's Exhibit A—(Continued)

he will then produce and manufacture two 4½ yard scrapers per day or the equivalent thereof in merchandise of other scrapers predicated on the retail list price as herein stated.

3. The Distributor agrees to purchase from the Manufacturer all the output or production of said Manufacturer and agrees to accept all production upon the completion at the yard of the manufacturing plant of the Manufacturer and agrees to pay for same on the 1st and 15th days of each and every month during the term of this agreement. Manufacturer agrees that all manufactured items delivered to the Distributor F.O.B. manufacturing plant shall be complete as to standard equipment.

4. As hereinbefore stated, Distributor is to have exclusive right to sell all the output of scrapers of the Manufacturer, both foreign and domestic, upon the following conditions:

(a) Distributor shall receive manufactured items at point of manufacturing.

(b) The Manufacturer agrees to sell to the Distributor items manufactured by the Manufacturer for cash F.O.B. point of manufacturing at forty per cent of the list retail price of items manufactured.

(c) It is agreed by and between the parties hereto that the present list retail price on the Miller Rotary Scraper are as follows:

	List price
2-yard scraper with standard equipment	\$1925.00
3-yard " " " "	2950.00

Claimant's Exhibit A—(Continued)

4½-yard	"	"	"	"	4210.00
6½-yard	"	"	"	"	5720.00
10-yard	"	"	"	"	10500.00

5. It is agreed that the foregoing prices as listed in the preceding paragraph and the wholesale price to Distributor based upon said list price shall be subject to change caused by fluctuating prices of materials and labor, and it is agreed that the retail prices shall be increased or decreased proportionately to said increases or decreases in materials and labor predicated on the retail list price of scrapers hereinabove set forth, but it being specifically understood and agreed that the Manufacturer is to receive not less than ten per cent net above the cost of manufacturing.

6. It is understood and agreed that the Manufacturer will furnish to the Distributor necessary parts for the maintenance of the scrapers hereinabove referred to sold and distributed to the Distributor, and that the Distributor shall have the sole and exclusive right of purchase of said parts at a retail price list to be maintained by the Manufacturer less per cent; it being further understood and agreed that any accessories handled by Manufacturer will be invoiced through the Distributor hereto.

7. The Manufacturer does hereby agree that he will maintain weight, quality, grades, texture and strength of materials as well as parts and finished products in at least the present quality of grades, textures and strength of parts and finished prod-

Claimant's Exhibit A—(Continued)

ucts as the same are now manufactured and that he will not change the same without the consent of the parties hereto.

8. The Distributor does hereby agree that it will warehouse or assist the Manufacturer in warehousing the materials and supplies of not less than \$25,000.00 in value, and when the Manufacturer is able to and does produce two scrapers per day for the Distributor, then the Distributor shall increase the said credit from \$25,000.00 up to but not to exceed \$50,000.00 for warehouse materials.

9. The Manufacturer does further agree that in case Manufacturer shall manufacture other items other than those not now manufactured by said Manufacturer, that said Distributor shall have the first right to include the same upon the same terms and conditions as in this agreement set forth but the said Distributor must notify said Manufacturer within thirty days after notice thereof as to whether or not it wishes to have said new items included in its agreement; otherwise, Manufacturer shall be free to make other contracts for the sale and distribution of the items not included in this contract.

10. The Manufacturer does hereby agree that during the term of this agreement he will maintain an engineering and research program of not less than that presently maintained for the improvement of items manufactured by said Manufacturer.

11. The Manufacturer during the term of this agreement hereby agrees to furnish all industrial advertising.

Claimant's Exhibit A—(Continued)

12. The Distributor hereby agrees to maintain throughout the period of this agreement a good and adequate sales promotion program and sales organization in order to fulfill the terms of this contract for the sale of the items herein referred to.

The Manufacturer does hereby agree not to subcontract any manufacture of Miller Rotary Scrapers without the consent of the parties hereto.

13. Manufacturer further agrees that in the event of an intended sale of the Miller Scraper Co. by said Manufacturer which shall include the property on which the property is now located or hereafter located and all equipment in the said plant and all equipment, including automobiles and materials and supplies on hand, outside of the plant used in connection with the said business including the present patent and patents now pending and any patent then pending at the time of such intended sale. Then, and in that event said Manufacturer shall notify the Distributor of the terms and conditions of said intended sale which shall include all of the above mentioned property, and the said Distributor is to have the first right and option to purchase upon meeting the terms and conditions as set forth by the Manufacturer. It shall be the duty of the Distributor to notify the Manufacturer of their intent to purchase within thirty days after notice is received by them from the Manufacturer stating the terms and conditions of such sale, and in the event the Distributor does not so notify the Manufacturer of its intent to

Claimant's Exhibit A—(Continued)

purchase, the Manufacturer may then sell to any interested party without obligation to the Distributor; provided also, that the Manufacturer reserves the right to incorporate the said business and take over all of the property above mentioned including the patent and patents pending, and any such incorporation of such business by the Manufacturer shall assume the obligation of this agreement and agree to be bound thereby.

14. The Distributor, its agents, servants, employees, successors and assigns, does hereby agree that in case of the termination of this agreement that it will not, for a period of five years, directly or indirectly, go into any competitive business with the Manufacturer, nor will the said Distributor, its agents, servants, employees, successors or assigns, directly or indirectly, handle or market through its own sales organization or through any sales organization owned or controlled by Distributor or any organization in which Distributor owns an interest, any items manufactured by Manufacturer and previously distributed by said Distributor, it being expressly understood and agreed that this restriction shall not apply to any items manufactured by the Manufacturer but not distributed by this Distributor.

15. In the event Distributor sells or assigns this contract shall be immediately terminable at the option of the Manufacturer.

16. Notice as herein used means written notice and all notices are to be made by registered mail

Claimant's Exhibit A—(Continued)

with return receipt requested addressed to Miller Scraper Co. at P. O. Box 58, Selma, California and Industrial Equipment Co. Inc. at 109 Prospect Street, Fort Morgan, Colorado.

17. Manufacturer further agrees that Distributor is to have an option to continue this agreement for an additional five years from the termination date hereof. In order to exercise said option Distributor shall give Manufacturer ninety days notice of his intention to take up and exercise said option.

18. It is agreed that neither party hereto shall be responsible to the other one under this agreement for failure to comply therewith by reason of strikes, lock-outs, labor disturbances, war, public calamity, or governmental regulation.

19. It is agreed that time is the essence of this agreement, and in the event of the violation of any of the promises, covenants, and agreements as herein contained and set forth by either party, the innocent injured party shall be considered to and shall have cause to terminate this agreement.

20. It is agreed that the patent and patents pending of Kenneth L. Miller, the Manufacturer, will be pledged to the loaner on any necessary papers for such purpose as a part of the security for such loan.

21. This contract is made for the purpose herein set forth only, and does not in any manner delegate to the Distributor the right or authority to

Claimant's Exhibit A—(Continued)

transact any business, or incur any obligation for, or in the name of the Manufacturer.

22. It is understood and agreed that the sole distributorship given to the Distributor is predicated upon and subject to the financial assistance herein agreed on, and in the event the financial assistance is not furnished as agreed on, the distributorship terminates.

23. It is understood and agreed that the stipulations herein shall bind the heirs, executors, administrators, successors in interest, and assigns of the respective parties hereto.

24. It is understood and agreed that Mary Miller, the wife of the Manufacturer herein, will sign this agreement and any and all other papers necessary for the consummation of this agreement.

25. It is agreed that in the event of the change of address of either party that any new address acquired shall be communicated to the other party by a notice in writing as herein agreed on.

26. It is agreed that in the event of an intended sale by the Distributor, of its corporation, Industrial Equipment Co., Inc., of Denver, Colorado, together with the property of such corporation, that the said Distributor will notify the Manufacturer of such intended sale and the terms and conditions of such sale, the Manufacturer shall then have the first right and option to purchase the Distributor corporation and its share of stock together with all of the listings of the sale organization and literature and office equipment and auto-

Claimant's Exhibit A—(Continued)

mobiles and other equipment belonging to said corporation, and it shall be the duty of the Manufacturer to notify the Distributor of his or its intention to purchase such property within thirty days after notice is received by the Manufacturer from the Distributor stating such terms and conditions of sale and if the Manufacturer does not notify the Distributor of its intent to purchase on such terms and conditions or better terms and conditions, the Distributor shall then be relieved of this option held by the Manufacturer.

In Witness Whereof, the parties hereto have set their hands the day and year first above written.

Miller Scraper Co.,

By /s/ Kenneth L. Miller.

Attest:

Industrial Equipment Co., Inc.

A Colorado Corporation,

By /s/ W. A. Reynolds,

President.

/s/ Royden Brown,

Secretary.

State of Colorado

County of Morgan—ss.

The foregoing instrument was acknowledged before me the 25th day of March, A.D., 1952, at five o'clock p.m. at Fort Morgan, Colorado, by W. A.

Claimant's Exhibit A—(Continued)
Reynolds as President of Industrial Equipment
Co., Inc., a Colorado Corporation.

Witness my hand and official seal.

My Commission expires February 16, 1954.

/s/ Thelma Tomky,
Notary Public.

The undersigned, Mary Miller, wife of Kenneth L. Miller, agrees that she will enter into and sign any and all necessary papers such as deeds of trust, chattel mortgages, and notes to facilitate and carry out the agreements agreed to on the part of her husband, Kenneth L. Miller.

Dated: March 20, 1952.

/s/ Mary Miller.

28014 — Recorded at request of First National Bank, Fort Morgan, Colo., at 46 min. past 11 a.m. May 26, 1952, Book 3170, page 62, Fresno County, California. I. E. Farley, County Recorder. By W. H. Watson, Deputy Recorder.

State of California
County of Fresno—ss.

On this 21st day of March A.D. 1952 before me, Miles J. Hansen, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Kenneth L. Miller and Mary Miller, his wife, known to me

Claimant's Exhibit A—(Continued)

to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

/s/ Miles J. Hansen,

Notary Public in and for said County and State of California. My Commission Expires October 29, 1953.

List of machinery and Serial Numbers:

- 1—400 Amp. G. E. Welding Machine—1766004
- 1—400 Amp. Lincoln Welding Machine—A-109031
- 1—300 Amp. G. E. Welding Machine—1845018
- 1—300 Amp. P. & H. Welding Machine—244588
- 1—300 Amp. Hobart Welding Machine—DW-20930
- 1—400 Amp. Lincoln Welding Machine—A-101338
- 1—200 Amp. G. E. Welding Machine—2330586
- 1—300 Amp. G. E. Welding Machine—1845000
- 1—200 Amp Lincoln Air Cooled Portable Welding Machine—A-191455
- 1—Airco Camograph Cutting Machine—623042
- 1—Airco Radiograph Cutting Machine—11386
- 1—21" Canedy Otto Drill Press—A-3435
- 1—6" Black & Decker Bench Grinder—139823
- 1—Buffalo Bench Drill Press—B-1962
- 1—Wells Metal Band Saw—9795
- 1—Oster Pipe Threading Machine—JT532
- 1—Yale 2 ton Electric Hoist—None
- 1—12" Dual Grinder Machine—3790

Claimant's Exhibit A—(Continued)

1—Kellogg Air Compressor—D-211015

1—100 lb. Acetylene Generator—None

1—American Lathe 16" x 8'—41464

1—3 H.P. Motor for above lathe—4501

1—9" x 10' Roll—A19341

1—Hendy Shaper and Planer

1—Annealing over (made at Manufacturer's shop)
—None1—Hydraulic Press (made at Manufacturer's shop)
—None

List of Vehicles:

1950 Dodge 1/2 ton pickup—Engine No. T-172-37383

J. I. Case Tractor, S.O. Model—Engine No. 5102031

Certification Attached.

CLAIMANT'S EXHIBIT "B"AMENDATORY AND SUPPLEMENTAL
AGREEMENT

This Agreement, made in quintuplicate and entered into at Selma, California, this 4th day of April, A.D., 1952, by and between Kenneth L. Miller, doing business as Miller Scraper Co. of Selma, California, hereinafter called the Manufacturer, and Consolidated Distributors, Inc., formerly Industrial Equipment Co., Inc., a Colorado Corporation, a corporation, incorporated under and by virtue of the laws of the State of Colorado and hereinafter called the Distributor,

Witnesseth:

Whereas, the parties hereto have heretofore en-

Claimant's Exhibit B—(Continued)

tered into an agreement dated the 20th day of March, 1952, and now, for their mutual advantages, the parties have agreed that certain changes, alterations or amendments be made in the said agreement heretofore entered into by and between them; and,

Whereas, the Manufacturer desires to devote all of his time and efforts to the manufacturing and production of scrapers and the parts thereof, and to avoid the expense and problems of the sale and distribution thereof on the retail market; and,

Whereas, it is the desire of the Distributor herein to engage in the business of selling and distributing the scrapers and parts produced and manufactured by the Manufacturer herein,

Now, Therefore, for and in Consideration of the considerations in their agreement dated March 20, 1952, and of these premises, and of the promises, covenants and agreements herein contained, the receipt and sufficiency of which is by each of the parties hereto acknowledged,

It is Stipulated and Agreed by and between the parties as follows:

I. That paragraph 2 of said agreement of March 20, 1952, is hereby amended by adding to the sentence ending on the fourth line following the description on the top of page 2 of said agreement the following:

”, and also on all additional chattels and equipment hereafter acquired by the Manufacturer and on all items purchased or acquired, in whole or in part, from the proceeds of the loan, which deed of

Claimant's Exhibit B—(Continued)

trust and chattel mortgage, or mortgages, shall be a first and prior lien on all property pledged or given as security thereunder."

II. That said paragraph 2 is hereby further amended by adding to the first line on page 3 of said agreement the following:

"provided, however, that upon termination of this agreement or upon any substantial breach or default thereof by the Manufacturer, the loan shall be due and payable upon demand, at the option of the Distributor or lienholder."

And by deleting the first full paragraph on page 3 of said agreement and inserting in lieu thereof the following:

"The aggregate amount of the loan of \$75,000.00 shall be made available to the Manufacturer at the Selma Branch of the Bank of America and shall be disbursed to him, in accordance with approved banking and loan procedures, upon his request to pay existing liens and for the payment of obligations incurred in the construction of increased plant space for manufacturing and for additional manufacturing equipment, and no such obligations will be incurred beyond the amount of said loan unless they be paid for by the Manufacturer without a further lien against the property to be pledged as security hereunder, which would take preference to the liens, mortgages, and/or other encumbrances thereon of the Distributor herein. Interest is to be charged to the Manufacturer only on the amounts disbursed to him and only from the respective dates of such disbursements."

Claimant's Exhibit B—(Continued)

III. That paragraph 3 of said agreement of March 20, 1952, is hereby deleted and amended to read as follows:

“3. The Distributor agrees to purchase from the Manufacturer all of the output or production of said Manufacturer and agrees to accept all production upon completion at the Yard of the Manufacturing Plant of the Manufacturer; the Manufacturer and Distributor agree that all manufactured items are to be delivered to the Distributor F.O.B. Carrier, at Selma, California, or are to be stored and/or warehoused at the Yard of the Manufacturer at the direction of the Distributor, and that, in either event, title thereof shall pass to the Distributor upon the occurrence thereof; and the Distributor herein agrees to pay the Manufacturer in full for all items so delivered and appropriated by the Manufacturer on the 1st and on the 15th of each and every month after the date of the Manufacturer's compliance therewith.”

IV. That paragraph 4 (b) of said agreement of March 20, 1952, is hereby amended to read as follows:

“(b) The Manufacturer agrees to sell to the Distributor all products and items manufactured or fabricated by the Manufacturer. Such sales are to be made F.O.B. at the point of manufacturing and at a price to the Distributor of sixty per cent (60%) of the retail price list established therefor, save and except for parts; and the Manufacturer agrees that he will control his production and will not re-

Claimant's Exhibit B—(Continued)

quire the Distributor to buy or accept delivery of the Manufacturer's products when the Distributor's inventory of the Manufacturer's products includes one hundred (100) scrapers or, at retail list prices, amounts to \$300,000.00, whichever is the lesser, and will further produce the type and quantity of the products he manufactures or fabricates as are ordered by the Distributor, taking into consideration the Manufacturer's average production capacity under the existing circumstances."

V. That paragraph 5 of said agreement of March 20, 1952, is hereby amended by first striking the last three (3) words thereof and then adding the following:

"direct cost of manufacturing as established by approved cost accounting procedures, and since it is anticipated by the parties that the direct cost of manufacturing will be materially reduced through the increased manufacturing facilities made possible by the financing of the Manufacturer hereunder, the parties do hereby agree that from time to time, as the direct cost of manufacturing is reduced, the retail prices will be adjusted (notwithstanding the lack of any increases or decreases in materials or labor) so as to reduce the retail list prices on all products manufactured or fabricated by the Manufacturer, with the view of reaching the greatest market on the best competitive basis."

VI. That paragraph 6 of said agreement of March 20, 1952, is hereby amended by adding the phrase:

Claimant's Exhibit B—(Continued)

”, but not less than cost to the Manufacturer, plus ten per cent (10%)”

after the word “per cent” and before the semicolon, on line 7 of page 4 thereof.

VII. That the end of paragraph 7 of said agreement of March 20, 1952, is hereby amended by adding the following:

”; and provided further that in the event of the breach of the provisions herein by either party regarding the sale, assignment or transfer, or attempted sale, assignment or transfer hereunder, that the innocent party herein shall have the right to terminate this contract.”,

before the period.

VIII. That paragraph 13 of said agreement of March 20, 1952, is hereby amended by adding thereto the following:

“However, it is distinctly understood and agreed that the Manufacturer will not consummate or conclude any sale or disposition of the within properties without first further providing the Distributor the opportunity to buy or acquire the same upon the same terms and conditions and at the same price as that for which the Manufacturer has a bona fide offer and proposes to consummate or conclude the sale or other disposition thereof.”

IX. That paragraph 14 of said agreement of March 20, 1952, is hereby deleted and amended to read as follows, to wit:

“14. The Distributor, its agents, successors and assigns, do hereby agree that in the case of the ter-

Claimant's Exhibit B—(Continued)

mination of this agreement that it will not for a period of five (5) years, directly or indirectly, go into any business which will compete with the said Manufacturer, or his successors or assigns; nor will the said Distributor, its agents, successors or assigns, directly or indirectly, handle or market through its own sales organization, or through any sales organization owned or controlled by the Distributor, or any organization of which the Distributor owns a substantial interest, any items manufactured by the Manufacturer and distributed by said Distributor in the State of California or in the State of Colorado, or in any other State or Foreign Country or Section thereof or Division thereof, wherein the said Distributor has sold and/or distributed items of manufacturing nature manufactured and delivered by the Manufacturer herein to the said Distributor, it being expressly understood and agreed that this restriction shall apply only to items manufactured by the Manufacturer and distributed to the said Distributor under this contract, and that this restriction is to be severable in all respects as to those matters included herein in the disjunctive and is to be severable from the other provisions and paragraphs of this contract."

X. That paragraph 15 of said agreement of March 20, 1952, is hereby stricken and deleted therefrom, and that paragraph 20 of said agreement is hereby amended by adding thereto the same sentence as is by paragraph VIII above provided to be added to paragraph 13, except that the word

Claimant's Exhibit B—(Continued)

"Manufacturer" in each place used will be "Distributor", and vice versa.

XI. That an additional paragraph is to be added after the last period at the end of paragraph 26 of said agreement of March 20, 1952, and is to read as follows:

"That it is understood and agreed by the parties hereto that this contract is to be of no force and effect until executed by all of the parties hereto in accordance with the provisions of the laws of the State wherein the same is to be executed and that the signatures of all parties, including Mary Miller, the wife of Kenneth L. Miller, are to be acknowledged as in the manner required by the acknowledgment of instruments requiring the recording, and that all parties hereto, including the said Mary Miller, the wife of the said Kenneth L. Miller, will execute and sign any and all necessary papers and documents to give full force and effect to this agreement."

In Witness Whereof, the parties hereto have executed this instrument to be signed and executed the day and year first above written.

Miller Scraper Co.,

By /s/ Kenneth L. Miller.

Consolidated Distributors, Inc.,

A Colorado Corporation,

By /s/ W. A. Reynolds,

President.

Attest:

/s/ R. Brown,

Secretary.

Claimant's Exhibit B—(Continued)

State of Colorado

County of Morgan—ss.

The foregoing instrument was acknowledged before me, this 8th day of April, A.D., 1952, by W. A. Reynolds, as President of the Consolidated Distributors, Inc., a Colorado Corporation.

Witness my hand and official seal.

/s/ Thelma Tomky,

Notary Public in and for said County and State.

My Commission Expires February 16, 1954.

The undersigned, Mary Miller, wife of Kenneth L. Miller, agrees that she will enter into and sign any and all necessary papers such as deeds of trust, chattel mortgages and notes to facilitate and carry out the agreements agreed to on the part of her husband, Kenneth L. Miller.

Dated: April 4, 1952.

/s/ Mary Miller.

State of California

County of Fresno—ss.

On this 4th day of April, A.D., 1952, before me, Robert W. Enghatt, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Kenneth L. Miller and Mary Miller, his wife, known to me to be the persons whose names are subscribed to the within Instrument, and who acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my

Claimant's Exhibit B—(Continued)

hand and affixed my Official Seal the day and year in this Certificate first above written.

/s/ Robert W. Enghabt,

Notary Public in and for said County and State.

My Commission Expires January 31, 1955.

No. 28015—Recorded at Request of First National Bank at 46 min. past 11 a.m. May 26, 1952, Book 3170, Page 73, Fresno County, California. I. E. Farley, County Recorder. By W. H. Watson, Deputy Recorder.

Certification Attached.

TRUSTEE'S EXHIBIT No. 9
AGREEMENT

This Agreement entered into as of the 23rd day of December, 1953, by and between Consolidated Distributors, Inc., of Colorado, a corporation, hereinafter referred to as First Party, and Kenneth L. Miller, Mary Miller and Miller Scraper & Manufacturing Co., Inc., a corporation, hereinafter referred to as Second Party,

Witnesseth:

On or about the 20th day of March, 1952, Kenneth L. Miller and Mary Miller entered into a contract in writing with Consolidated Distributors, Inc., of Colorado, then known as Industrial Equipment, Inc., which said contract was thereafter amended and supplemented by a contract dated April 21, 1952.

Pursuant to said contract First Inc., a corpora-

Trustee's Exhibit No. 9—(Continued)

of the present location and their shipment elsewhere over and above their normal freight from Selma, California, to eventual point of sale such excess freight may be deducted from the price thereof. Freight incurred for shipment to a point for repairs shall be at the expense of Second Party.

III.

Attached hereto marked Exhibit "B" is a list of scrapers now owned by First Party. Said scrapers shall be sold in the name of Miller Scraper & Manufacturing Co., Inc., as hereinafter provided and from the proceeds of such sales there shall be deposited to the account of First Party at Bank of America, Selma, the amount set forth opposite each scraper so listed. It is understood that certain of said scrapers are encumbered to the Bank of America upon a flooring contract to the extent of 90% of their original cost. The parties hereto shall cooperate to the extent possible (it being recognized that neither party currently has sufficient funds to pay the promissory notes secured by said contracts) to the end that said contracts shall be continued until sale of said scrapers. Such cooperation shall not require Second Party to incur obligations upon said notes nor shall default therein by First Party or any guarantor thereof or loss of said scrapers to said Bank constitute a breach of this agreement.

IV.

Second Party shall at their own expense place

Trustee's Exhibit No. 9—(Continued)

all scrapers described in this agreement in a condition to be sold and thereafter the scrapers listed on Exhibit "B", together with any scrapers hereafter manufactured by Second Party, or any of them, shall be sold in the following manner.

There is hereby established a sales division of Miller Scraper & Manufacturing Co., Inc. Said division shall consist of two salesmen employed by said corporation, one of whom shall be appointed by First Party and one by Second Party. The salesmen so appointed may be changed from time to time as may be deemed desirable by the party making such appointment. Said division shall likewise employ such clerical help as may be reasonably necessary. The proceeds of all sales shall be collected by and deposited in a bank account maintained by such division as a trust account and distributed as herein provided.

From the proceeds of the sales of each scraper there shall first be paid the cost thereof to the owner. When the owner is First Party the cost shall be deemed the amount set forth opposite the scraper listed in Exhibit "B". Where the owner is Second Party the cost shall be deemed to be the retail list price in effect from time to time less 35%. Discounts to dealers from retail list price shall be not more than 20% and 5% of retail list price unless the written consent of each party is first had and obtained.

After payment to the respective scraper owner

Trustee's Exhibit No. 9—(Continued)

written, made by First Party with third parties, their dealers or creditors, except as hereinabove set forth.

VII.

Second Party may withhold from the amounts agreed to be paid in paragraph I hereof for its own account the sum of \$546.00 in full settlement of amounts allegedly due and owing from First Party to Second Party for goods, wares and merchandise sold and delivered and office rental. First Party shall obtain the release of an attachment heretofore levied in an action entitled John Axman vs. Consolidated Distributors, Inc., of Colorado upon an assigned claim for one E. Van Bogart or in the event First Party fails to obtain such release Second Party shall withhold on account of such attachment until settlement thereof the amount of \$1562.18 until final disposition of said action.

VIII.

First Party shall furnish to Second Party and said sales division a list of all dealers and addresses with whom First Party has dealt, agreements and commitments made by and between First Party and said dealers, plates, movie film, advertising material and copies of dealers' correspondence.

IX.

Each of the parties hereto, their agents and employees, shall refrain from and shall not represent to third persons that they are in any manner connected with or representing the other party and

Trustee's Exhibit No. 9—(Continued)

that the contracts heretofore entered into between the parties hereto and/or Industrial Equipment, Inc., being the former name of Consolidated Distributors, Inc., of Colorado, and/or First, Inc., be and the same hereby are cancelled and discharged.

The parties hereto shall execute a joint letter for distribution as either party may desire to the effect that the controversies between the parties hereto have been amicably settled; that First Party is no longer the distributor for Second Party and that any and all dealers are free to deal directly with Miller Scraper & Manufacturing Co., Inc.

X.

It is further understood and agreed that First Party will deliver, or cause to be delivered, to Second Party, the said promissory note of \$75,000.00 hereinabove referred to, properly cancelled, together with all loan documents pertaining to the same; that they will execute a satisfaction of all chattel mortgages, reconveyances under deeds of trust, reassign all patents heretofore assigned to them as security, and should it be necessary for either of the parties hereto to sign or execute any further documents to carry out the purposes and intent of this agreement, each of the parties hereto, and their assigns, are hereby authorized and empowered to execute the same so as to properly give a full release to each of the parties hereto.

XI.

The parties hereto agree that said contract here-

Trustee's Exhibit No. 9—(Continued)
in and for the County of Fresno, to the complaint,
cross-complaints and counter-claims on file therein.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

Consolidated Distributors, Inc.,
of Colorado,

/s/ By Forrest S. Alkine,
President,
First Party.

/s/ W. A. Reynolds.

/s/ Kenneth L. Miller,
President,
Mary Miller,

/s/ By Kenneth Miller,
Attorney in Fact,
Miller Scraper & Manufacturing
Co., Inc.,

/s/ By Kenneth L. Miller,
President,
Second Party.

Exhibit "A"

Scraper Number — Customer — Account Receivable
Balance

41½ yards—

D-127—Dulaney Service Company, Box 420, Loop
13, Military Dr. South, San Antonio, Texas—
\$3,199.60

61½ yards—

B-90—Ray-Brooks Machinery Co., Inc., P. O.
Trustee's Exhibit No. 9—(Continued)

Box 551, Montgomery, Alabama—\$4,347.20

B-93—Ryan Equipment Co., 3350 Morgan Ford
Road, St. Louis, Missouri—\$4,347.20

B-96—Ryan Equipment Co., 3350 Morgan Ford
Road, St. Louis, Missouri—\$4,347.20

10 yards—

E-54—Ryan Equipment Co., 3350 Morgan Ford
Road, St. Louis, Missouri—\$8,018.00

Exhibit "B"

Description—Number—Location—Cost

41½ yard scraper D-0087—Othello Implement Co.,
Othello, Washington—\$2,526.00

41½ yard scraper D-0112—Boozer's Service & Equip-
ment, Winterhaven, Florida—\$2,826.00

61½ yard scraper (Note 1)—Morgan County Imple-
ment Co., Ft. Morgan, Colorado—\$3,968.32

Note 1: This scraper serial number is unknown.
It is a unit returned to Morgan County Imple-
ment Co. by a customer in exchange for unit
B-65 delivered to the customer.

61½ yard scraper B-86—Mixermobile Manufactu-
rers, 8027 N. E. Killingsworth St., Portland 20,
Oregon—3,704.51.

2 yard scraper A-60—Farmers Supply Co., Chan-
tilly, Virginia—\$1,265.00

2 yard scraper A-68—Travis Brown Equipment Co.,
Wichita, Kansas—\$1,155.00

41½ yard scraper D-0128—Hearne Equipment Co.,
Hearne, Texas—\$2,526.00

Trustee's Exhibit No. 9—(Continued)

6½ yard scraper B-97—Anderson Equipment Co.,

P. O. Box 14008, Houston, Texas—\$3,432.00

6½ yard scraper B-98—Dulaney Service Company,

Box 420, Loop 13, Military Dr. South, San Antonio, Texas—\$3,432.00

2 yard scrapers—

A-64	\$1,155.00	A-72	\$1,155.00
A-65	1,155.00	A-73	1,155.00
A-66	1,155.00	A-74	1,155.00
A-67	1,155.00	A-75	1,155.00
A-69	1,155.00	A-76	1,155.00
A-70	1,155.00	A-77	1,155.00
A-71	1,155.00		

3 yard scrapers—

C-364	\$1,770.00	C-372	\$1,770.00
C-365	1,770.00	C-373	1,770.00
C-366	1,770.00	C-374	1,770.00
C-369	1,770.00	C-375	1,770.00
C-370	1,770.00	C-376	1,770.00
C-371	1,770.00		

4½ yard scrapers—

D-0129	\$2,526.00	D-0132	\$2,526.00
D-0130	2,526.00	D-0133	2,526.00
D-0131	2,526.00	D-0134	2,526.00

[Endorsed]: No. 15456. United States Court of Appeals for the Ninth Circuit. Joseph L. Joy, Trustee of the Estate of Miller Scraper & Mfg. Co., Inc., bankrupt, Appellant, vs. Bank of America National Trust and Savings Association and Consolidated Distributors, Inc., a corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: February 28, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 15456

JOSEPH L. JOY, Trustee of the Estate of Miller
Scraper & Mfg. Co., Inc., Bankrupt,
Appellant,

vs.

BANK OF AMERICA N. T. & S. A., a banking
corporation, and CONSOLIDATED DIS-
TRIBUTORS, INC., a corporation,
Appellees.APPELLANT'S STATEMENT OF POINTS
ON APPEAL

The appellant in the above entitled cause does hereby adopt, as his Statement of Points on Appeal and his Designation of Record on Appeal, the Statement of Points on Appeal and Designation of Contents of Record on Appeal filed by appellant in the District Court, together with the original exhibits ordered transmitted to the Court of Appeals.

Dated: March 18, 1957.

ECKHART A. THOMPSON and
JAMES M. CONNERS,/s/ By JAMES M. CONNERS,
Attorneys for Appellant.

[Endorsed]: Filed March 18, 1957. Paul P. O'Brien, Clerk.